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Thesis

"EVIDENCES AND RECOMMENDATIONS WITH REFERENCE TO UNPUNISHED CRIMES IN THE UNITED STATES TODAY."

by

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PREFACE

The subject arose out of a chance remark made by Dr. Charles R. Zahniser, of the School of Religious and Social Work of Boston University, in one of the courses the writer took with him. The remark was to the effect that nothing much had been written on the subject, and that some student might do well to use the topic as the basis for a paper. The hint was taken and this paper is the result.

The subject matter of this topic covers a great deal of ground, and the topic because of this fact, could easily serve as a basis for a dissertation for the doctorate. The thesis is largely a research paper, most of the material being gathered from various sources available to the author.

The author has incorporated in his picture of unpunished crimes the ideas of many persons whose works are quoted or referred to in notes and bibliographies. He has also been greatly aided by lawyers and friends who have contributed helpful facts and suggestions. To all of these who find their ideas incorporated in these pages the author gratefully acknowledges his indebtedness.

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Introduction

The problem of unpunished crimes which I propose to discuss in this paper is in some respects like New England weather as Mark Twain once described it - everybody talks about it, but no one does anything about it.

We all admit the existence of the problem - we talk about it, read about it, think about it, attempt to legislate about it, and, in some rare cases, do take some definite action about it. Not much has been written about the subject itself. Men have written about some of the various factors which cause crimes to go unpunished, but, as far as the author knows, no one writer has attempted to take each of the more important factors, correlate them, and then offer some definite remedies in light of these factors.

Because this problem does exist, because there is a definite need for remedying it, the writer has undertaken to bring all these factors into focus and on this base to build his recommendations for reforms in the various departments having charge of the administration of criminal justice.

Any discussion of unpunished crimes entails a definition of these terms so that the reader can see the proposition from the same point of view as the writer. The most important term in the problem is "crime". What is crime? William M. Ivins writing in the Proceedings of the Academy of Political Science devoted some forty-odd pages to a discussion of the definition of crime; the law dictionaries devote pages to the definition of

this term; books on criminology also devote the better part of chapters in their text on this term and allied words. The author could, therefore, if he so desired, devote an entire thesis to a discussion of this one term.

Since the beginnings of society crime has often been connected by usage with such terms as blasphemy, vice, sin, and immorality. In certain countries and at certain times to commit blasphemy was to commit a crime; in other countries and at other times some sins and some vices were thought of as criminal acts; but in no one country and at no one time has every vice or every sin been considered a crime. Looking back through time we can see that in certain countries and at certain times crime and sin were very nearly synonymous. Today, however, these words have distinct meanings, and although the same act may be vice, sin, and crime, it is crime only because a legislative body has so decreed, and acts not commonly regarded as sinful may become criminal acts by the same authority. The words have taken on different complexions and have assumed rather different definitions.

I am perfectly aware that for general purposes definition is negligible.

> "It becomes of importance only for specific purposes and in reference to particular facts, but it so happens that every crime is a particular fact, and that the whole theory of law with regard to the punishment of crime is a theory involving probative principles

and for probative purposes definitions are absolutely necessary."[1]

Perhaps the most general definition of crime would be - "a positive or negative act in violation of penal law; an offense against the State."[2]

Bishop further defines crimes as

"those wrongs which the government notices as injurious to the public, and punishes in what is called a 'criminal proceeding', in its own name."

And again, Bell in his "Dictionary and Digest of the Laws of Scotland" states,

"a crime may be defined to be any act done in violation of those duties which an individual owes to the community, and for the breach of which the law has provided that the offender shall make satisfaction to the public."[3]

The penal codes of many of our states are more specific in their definitions realizing as they do that a crime in order to be so considered must be made punishable by some method and that the punishment must be so stated in the definition of the crime. We find, therefore, this definition in the penal codes of many states,

"A crime or public offense is an act committed or om-

1. "What is Crime?" in the Proceedings of the Academy of Political Science in the City of New York, William M. Ivins, July 11, Vol. 1, No. 4, p. 547
2. "Black's Law Dictionary", Henry Campbell Balck, West Publishing Co., St. Paul, Minn., 1933, 3rd edition.
3. Black, op. cit.

itted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments: (1) Death; (2) imprisonment; (3) fine; (4) removal from office; or (5) disqualification to hold and enjoy any office of honor, trust, or profit in this state."[4]

Georgia in its code specifies the need for intent in connection with the act, or criminal negligence,

"A crime or misdemeanor shall consist in a violation of a public law, in the commission of which there shall be a union or joint operation of act and intention, or criminal negligence."[5]

According to Blackstone, the word "crime" denotes such offenses as are of a deeper and more atrocious dye, while smaller faults and omissions of less consequence are called "misdemeanors". But the better use appears to be to make "crime" a term of broad and general import, including both felonies and misdemeanors, and hence covering all infractions of the criminal law. In this sense it is not a technical phrase, strictly speaking, but a convenient general term. In this sense, also, "offense" or "public offense" should be used synonomous with it.

We have in these United States forty-eight jurisdictions, besides the federal jurisdiction, at the present time. Each of

4. Penal Code of California, Section 15
5. Code of Georgia, 1882, Section 4292

these jurisdictions has the power to declare acts to be criminal. Does this declaration of itself constitute criminality on the part of him who commits the act? Is it possible that we can have an efficient and intelligible criminal law under conditions where either in New Jersey or Connecticut, an act may be entirely innocent, and yet in New York the same act would be criminal; that we can have an adequate criminal law where one state makes adultery a crime and all the surrounding states leave the same act with impunity in the ethical category and wholly outside the legal one? Is it possible that that which may be regarded as a crime against the community, that is against the state as such in one jurisdiction, in another community is not looked upon as a crime? Is it possible that one state can by law make an enemy of society by decreeing a highly social man into the criminal or anti-social class?

Eventually we shall have to find a definition of crime and a definition for criminal other than the tautology which makes up our present useless formal definition. It must be the law, sooner or later, that the same definition of criminality shall hold throughout the nation. It may be true that we shall have different ethical standards in different parts of the country dependent, of course, upon the character of the community, its progress and civilization, whether it be a financial community, an industrial community, or an agricultural community, or what not, but one thing is certain - we must have but one standard of criminality, and to attain that we must have one definition

of crime and a means for determining whether a man is or is not a criminal. Bosanquet reminds us that

> "for the pure sociologist and act is a crime when it offends the strong and definite collective sentiments of society. This is the strictly causal view of the matter. The act is a crime because it offends; it does not offend because it is a crime. And the corrollaries are valuable. It is idle to distinguish, on such a basis, between the reformatory, the retributive, and the deterrent views of the reaction which is punishment. An offensive act is in itself at once an exhibition of character, an injury, and a menace."[6]

Here in this passage we find, possible, the kernel of that which may afford us the solution. To begin with, crime is an act, it is a fact. Socially it is a thing. It is an offensive act, not because it has been declared so in spite of the concensus of society, but because the concensus of society makes it so. But in addition to this it is a demonstration of character so far as the individual is concerned. Insofar as our present society is concerned it is an injury, and as far as the future of society is concerned it is a menace.

> "Our average definition of crime is perfectly futile. The language is full of words, some of which are names

6. "Philosophical Theory of the State", Bernard Bosanquet, The Macmillan Co., New York, 1899, p. 37 (footnote)

that are really names and others which are names that are only noises. Sometimes the same word may be a name and at other times it may be a noise. There are times when murder is a name and times when it is a noise; times when witchcraft was a name because it was punishable, and now it is merely a noise so far as the law is concerned because it is known to be non-existent. So the generic word crime is generally a noise and it becomes a name only when it is attached to a particular act. The plural, crimes, has come to be merely the noisiest of noises, adopted for all uses, by all persons, at all times, in all walks of life as applicable to the doings or the thinkings of those who differ radically with the person who happens to be making the noise. The difficulty arises when these noises are sought to be enacted into laws, and this is particularly true when the world has become a general debating society, and men and women are continually walking about to see whom they may convince, or, failing that, condemn, and there is no single word which lends itself more particularly to an artificial and precarious simplicity than the word crime, and this, combined with the readiness to believe that rules are better instead of worse for being concise and apparently simple, is one of the sources of our legislative difficulties."[7]

7. Ivins, op. cit., p. 551

I do not think it going too far to say that in nine-tenths of our characterizations of acts as criminal we are surreptitiously assuming the truth of what we are pretending to prove.

> "In the last edition of Wines' "Punishment and Reformation' it is stated, 'The criminal is the concrete expression of the abstract idea of crime,' and this definition is about as good as any that is found in the law books. But it is no definition whatever. Moreover, it errs because that may be a crime which is wrongful only because the legislature declares it to be so, and that which may have been innocent yesterday, may be criminal today, and may become honest again tomorrow. It may be a crime although it violates no right of other men, but merely because the legislature declares it so, or it may be a crime, although it does no injury to society, but only violates the idea of the legislature with regard to what constitutes an injury to society."[8]

I do not propose to offer any illustrations of the first two assertions, because they are plentiful in our everyday experience, but you may not be so apt to find an illustration of the last unless it is called to your attention, but I can offer an illustration of this assertion. It was a crime for Mistress

8. Ivins, op. cit., p. 552

Anne Hutchinson to speak in public, and she was, therefore, driven out of Massachusetts and compelled to enter another community. But continuing further, for centuries and even during the same time when Mistress Anne Hutchinson committed a crime by speaking in public, the practice of witchcraft was a crime, although as we now know, there was no such thing as witchcraft, in spite of the declaration of the Scripture, and the Court of King' Bench to the contrary.

So our legislature might declare it to be criminal to coin gold by neocromancy, and if a jury could be made to believe that that fact was proved the crime would be established.

> "In 1911 we had an identical illustration of this in the tendency to legislate belief into law, in what one of the judges of the Supreme Court of the United States had described as not only desirable but possible, that is, to legislate that hereafter competition and not combination shall be the law of trade."[9]

It is easy to give us a formal definition of crime which all may accept, just as all may safely accept the definition of the man who is on the right side of another man - that whatever the legislature shall declare to be a crime, and particularly if that declaration shall be accomplished by a penalty or a punishment, is a crime. The inevitable result of this definition is to take

9. Ivins, op. cit., p. 552-553

criminality out of all human categories and to place it purely and simply in the category of legislative theory. The consequences of such an action which would, of necessity, follow is the

> "natural and necessary bankruptcy of the criminal law, the impossibility of establishing a science or art of criminality which has any relation with our natural science or art of legislation, the making unintelligible all theories of delictuosity, the mingling and confusing of all theories of punibility, the impossibility of criminal statistics, and finally, in all probability, after conditions have become utterly unbearable, the necessity for providing: first, that all criminal law shall be the work of experts not only in history and psychology, but in sociology, and not a congressional mob run by committees run by individuals who are run by interests."[10]

Whatever the ultimate definition of crime may be it will certainly be the great central point to which and from which the whole of subjective and objective criminal law must radiate. It is the parameter of the relation of society to the individual. For want of a proper answer, in fact of any answer to our question "What is crime", our laws have become a mockery, our penal

10. Ivins, op. cit ., p. 553

administration has become most difficult, our jails are always full to capacity and in some states they are overcrowded as a result of the criminality of the criminal law, our police problem a most pressing one, and the community itself a victim of the contagion of ignorance which has removed whatever distinction there existed between criminality and the condemnation of the crowd, not of society. And of all things, that which was lately the supreme virtue - I mean success - has now become the greatest crime save the success of demagoguery alone.

I hold no brief for anyone. There can be no doubt that there are great criminals who go unpunished, and that there are innocent men in jail, but, the fact that I state such a fact tends to no solution of any kind whatever. The danger and seriousness of the situation is that we are confronted with problems which our present organization of society seems to be either unable or unwilling to solve.

In a speech given some sixteen years ago an eminent banker, Mr. Otto H. Kahn, uttered a truth which is still applicable to the problem of defining crimes, when, speaking of the late Edward H. Harriman, he said:

> "Mr. Harriman's attitude and respect to the law of the land has been much misinterpreted and misunderstood. To begin with, he had profound respect for the moral, the ethical law, and under no circumstances and under no temptation would he ever have done anything wrong which was not justified before the tribunal of his own conscience, his own honest conception of right or wrong.

To that conviction of the rectitude of his purpose and actions was added the firm belief in himself which is a characteristic of all stong men. He did not exactly look upon himself as a chosen instrument of Providence in the perfomance of his task, but he did have, and was actuated by, a profound and unwavering faith that what he, after mature thought, felt should be done, was best for the properties of which he was the directing head, was of benefit to the communities which they served, as well as to the country at large, and was ethically right and proper to be done. He chafed and fretted strenuously when the letter of some statute, possibly drawn without a full realization of its practical effects, stood in the way of what he considered to be absolutely proper and beneficial objects to accomplish. He was irritable and impatient at stupid laws, as he was at all stupidity. He had to be shown to his entire conviction that the laws did clearly stand in the way before he would desist from a purpose which he deemed just and right, but the realization of which would not have been in accordance with existing statutes. If there were substantial doubt he would be tempted to resolve the doubt in favor of his purpose and go ahead; whenever possible, he would be a law unto himself, but he never consciously went counter to any existing law except, to be entirely correct,

that he may have winked at the infraction of one or two provisions of the railroad law which for many years, with the full knowledge and sanction of the constituted authorities, had lain dormant, and for a lack of enforcement had come to be looked upon as unenforceable and as obsolete as the Puritan blue laws."[11]

What Mr. Harriman with his great will was being compelled by the state to do, is being done by small business men, in a small way, but insofar as society is concerned, with equally determined wills of their own; for while they clamor to their legislatures for legislation, they have nothing but contempt for such legislation. One thing about Mr. Harriman is certain and that is that he was of the great creative, social, and not of the great destructive, anti-social class, that he was, typically social and typically not a criminal; and yet it would seem that we must find another classification for such men; because there is bound to be a conflict between such men in their social groups and the greater social group which we call the state. But here we meet another popular doctrine which believes that ten such innocent men of this class should go to jail rather than that one should escape.

The question, then, is whose fault is it is there is this conflict between the statesman and the economic builder, both

11. Ivins, op. cit., p. 554

of them upbuilders, both social institutions, and certainly neither of them unsocial? Does the fault lie with the individual or with the form of the state? Is it the fault of the general breaking down of the clear and clean circumference of the ethical order and the substitution in its place of a sort of haze or indistinct fringe? Or maybe the fault is in the general contempt which the law has brought upon itself by the blind worship of the principle of salvation through legislation. Or can it be the result of the ignorance of the law makers? Is it the result of those who enforce the laws, or is it the fault of society as a whole? Whatever it may be the result of, it is certainly, I believe, the result of our belief in salvation by legislation, of our belief that legislation may erect into a crime that which society does not believe to be a crime, that it may fail to punish that which society believes to be punishable. Or it may be the result of a diffused ungodliness that comes from reckless commercialism, issuing from that melting pot of races, religions, traditions, and ambitions, which our partisan political scheme, under the name of democracy has become. Then again, it may be due largely to the fact that it takes the unanimous decision of twelve men in a jury to make a criminal as the word is understood in law, but by construction from the bench it takes only a majority to condemn, which is but a further illustration of the fact that the law is not alike for rich and poor, but may be as distinctly unjust to the rich as it is to the poor.

The difficulty with most of our so-called criminal law is that while it is legislation it is not really law, and as law it has no uniformity or certainty, because, to use a phrase of logicians, it fails utterly to distinguish between the assertive and the apoditic. Such statutes may be apoditic so far as concerns the statement of the legislature's conception of the duty of the state, that is, insofar as they use the word "shall", but beyond that they are partially assertive and simply an infinite number of hypotheticals. Thus they become merely assertive and not laws at all, and so lie wholly outside the common consciousness of crime and criminality. Legislative declarations of this kind are, therefore, hypothetical and not categorical, purely probative in requirement and without any place in the moral order. They do not fall properly under the category "crime", but rather under the category "forbidden and penalized", that is, the category in which might may exercise itself quite independently of any consideration but temporary political expediency. It does not follow, however, that everything that is punishable is a crime, unless it be a crime because that is the very definition of crime. Otherwise sneezing in a street car may fall within the category as the Honorable City Council may decree.

Even Blackstone's definition, which did have some relation to the historical development of crime, does not suffice. He says a crime is

"a rule of civil conduct prescribed by the supreme power of a state, commanding what is right and prohibiting what

is wrong,"[12]

whereas all that it is, according to common definition, is a rule of civil conduct prescribed by the supreme power of the state and punishable upon proof as the state may prescribe.

We do not need a law against cannibalism, although there was a time when such a law was badly needed. It is because the condemnation of cannibalism has entered irrepealably into our permanently established moral code. The interpretations of moral terms change continuously, change with every advance, with every evolution, as with every disintegration of society. So it is with our legal terms; as society advances we give constantly new interpretations to old words. We could have no better illustration for instance than that of larceny. Today there are a thousand larcenous acts which would have been unintelligible to older law because the occasion for these acts, the opportunities out of which the occasion arose, never occured.

I believe that we shall find that the only ultimate cure for our law is the widening and deepening of our ethics. No law can be better than the people, and after all is said and done our sins are our own, and we are generally very kind to them and very hypocritical about them. To quote a thoughtful English writer,

> "We need to recognize that with every step in the organization of society questions of morality become less and less of private and individual concern."

12. Black, op. cit.

A man to be a good citizen - and this is supremely true of the man who is to be a good legislator - should act not upon ancient standards and not wholly upon present standards either, but should have in view those inevitable future standards which are visible to all men who have the clairvoyance of goodness or wisdom.

We can, therefore, see the difficulty in giving an adequate definition of crime because of the many varied interpretations of this term. A crime is only what the law says is a crime - nothing more. Yet this definition covers a great deal of criminal activity. Classified as crimes among others are traffic violations, drunkenness, and many other minor offenses. For the purposes of this paper when we speak of crime we shall be referring to those crimes which are punishable by prison offenses.

By the entire phrase "unpunished crimes" I have in mind crimes which might be punished by imprisonmnet in state and federal prisons but are not. This will exclude from this paper, of course, those crimes which are punishable by fines - traffic violations, drunkenness, and the other petty offenses. These former crimes may go unpunished for a number of reasons, all of which I propose to discuss at some length during the course of this thesis.

In this paper we are concerned with the extent of unpunished crime. That crimes do go unpunished is acknowledged by all those interested in criminology. Determining the extent of unpunished crimes is a rather difficult task, for there is a definite lack of statistics on this phase of the subject. I shall, however,

attempt to show its extent by using statistics obtained from the various crime surveys - the Wickersham Report, The Cleveland, Missouri, and Illinois Crime Surveys, and other surveys which have covered phases of this subject. Following this, I propose to offer recommendations, based on the studies and experience of men in the field, which may help to remedy the situation as it exists today.

Extent of Unpunished Crime in the United States

The extent of unpunished crime in the United States may, in some phases, be determined by a correlation of two factors - the cost of crime and the prison population in that it is indicative of punishment for crime. In regards to the latter, the reader should bear in mind the limitations that have been set upon the definition of crime. The author fully realizes that adequate and accurate figures as regards the number of offenses committed and commitments to the prisons are woefully lacking. Not only are statistics lacking for these two phases of crime, but figures for the number of arrests, warrants issued, and indictments have not been generally available. In view of these existing conditions the question arises as to why this method is used and how we can get an accurate picture. By this method, bad as it may be, we hope to find a partial picture of the situation as it exists. In short, then, there is no definite way to determine exactly the extent of unpunished crimes. We can only compare such figures as are available, get a partial view of the extent of unpunished crime, and then estimate the rest of the picture.

Use of this method would involve a need for reliable figures as regards the cost of crime. These are available. Unavailable, however, are adequate figures regarding prison commitments for each of the offenses for which we have figures as to its cost. Another method which will be used later in the paper is that which examines closely crime surveys which have been made in the Middle Western States. These show the ultimate disposition of

felony cases which have come before the courts of those states. These statistics are not infallible either. They are subject to fault and this fault will be discussed when the tables are quoted later on in the paper.

In the matter of the cost of crime much excellent work has been done. In 1931 the report of the National Commission on Law Observance and Enforcement[13] was published. This commission was headed by the then Attorney-General, George W. Wickersham. The report consisted of twelve studies the last of which deals with the cost of crime. The survey was made by Goldthwaite Dorr and Sidney Simpson and their aides. It is this report that has been of inestimable value to all students of criminology.

Dorr and Simpson have made the only study which faces all the various problems that arise when considering the cost of crime with a frankness that is refreshing. Most of the problems arise out of a consideration of ascertaining the cost of crime - what should be taken into consideration when we try to figure out the crime bill of the nation, how much shall we charge to the cost of crime and what part to civil business especially as regards aalaries of judges, attorneys, other court officers, clerks and janitorial staff. What part of the investment in court buildings, equipment and running expenses should be allocated as a cost of crime? These same problems confront us in analyzing the

13. National Commission on Law Observance and Enforcement. Vol. 12, Government Printing Office, Washington, D. C., 1931

cost of police protection, probation, parole, and the city, county and state institutions which sometimes house non-criminal dependents as well as criminals.

The Dorr and Simpson survey has also the merit of being the broadest study yet attempted. Still it is by no means all inclusive for it suffers from two very serious omissions - the costs of administration of criminal justice in cities under 25,000 in population, and an adequate study of individual losses due directly to criminal acts - these both because of the lack of funds and the lack of time. The Dorr - Simpson investigation carried out between 1929 and 1931, with the help of a large corps of field workers, involved a study of the published and unpublished material already available, a nation-wide field survey of the crime bill, the collection of expenditures by private individuals for private protection, and an analysis of both private and community losses.

Dorr and Simpson agree that it is impossible to state a single lump-sum figure that will even approach the aggregate annual economic cost of crime to the United States. And even if we did know the cost it would not serve any useful purpose. The values of an economic study of crime lies chiefly in the examination of comparative costs. Some of the reasonably accurate figures that they give are:

Federal cost of criminal justice----------	$52,786,000
State Police Forces----------	2,660,000
Cost of criminal justice in places over 25,000)---------	247,700,000

State penal and correctional work--------	$ 51,720,000
Private protective service----------	10,000,000
Armored car service----------	3,900,000
Fraudulent use of the mails----------	68,000,000
Insurance against crime----------	106,000,000
Loss of the productive labor of pri-soners and law-enforcement officers) ----	300,000,000
Insured losses due to crime----------	47,000,000

However, as Professor Albert Morris in his text "Criminology" has so aptly put it,

"Estimating the damage done by criminals seems to be the great American Statistical pastime..... Historically interesting is the calculation of Eugene Smith made in 1900 that 250,000 persons in the United States made their living at least in part by crime at a cost of $400,000,000 a year plus $200,000,000 additional in taxes for their apprehension and punishment .....Since then the figures have climbed. In 1910 Weir estimated the annual cost at $1,370,000,000. Lydston placed it at $5,000,000,000. A few of the more recently published figures on the yearly cost of crime are: Anderson, $912,500,000 (1923); Gillin, $3,000,000,000 (1926); Smith, $10,000,000,000 (1924); Enright, $11,800,000,000 to $13,000,000,000 (1929); Baumes Commission, $13,000,000,000 exclusive of financial crime (1928); White House Conference on Child Health and Protection, $16,000,000,000 (1930); Reeve,

$18,000,000,000 (1931)."[14]

The cost of crime when correlated with the prison population reveals much interesting data. With this idea in mind we shall proceed to a more detailed study of the cost of crime but with special reference to private losses due to criminal acts. In the Wickersham Report in the volume on the cost of crime Sidney Simpson has an interesting section on just this subject.

The report deals with the more important classes of private losses classifying them under three headings: (a) crimes against the person; (b) direct crimes against property, including the criminal destruction of property and the various forms of theft; and (c) crimes affecting wealth other than direct crimes against property, and, to a very limited extent, as to losses due to certain forms of a commercializad fraud.

The study is complete descriptively but it lacks statistical completeness. This statistical incompleteness is partly due to the lack of time and funds for a more complete investigation, and it is partly inherent in the subject itself. As regards the case of losses due to crimes against the person - murder, rape, mayhem, etc. - accurate statistical data expressed in monetary terms is in the nature of things unobtainable. Had the time and more particularly the funds been available for the investigation of commercialized fraud and organized extortion

14. "Criminology", Albert Morris, Longmans, Green & Co., New York, 1934, p. 20-21

of which accurate figures are difficult to obtain the necessary detailed field studies which alone could have afforded the basis for even an intelligent guess at the order of magnitude of such losses could have been made.

This omission of quantitative data as to private economic losses due to crime against the person is not thought to be very serious for such crimes are not frequent, relatively speaking, and have more significance from an individual and social standpoint than from an economic one. When it comes to commercialized fraud, racketeering, and other forms of organized extortion, however, the omission of comprehensive figures is a serious affair; for any study of any phase of crime and crime control, not only of the economic aspects of crime, which fails to give complete and detailed consideration to this most important problem of organized crime as a business is sadly lacking in completeness. The sole reason Dorr and Simpson fail to deal fully with this problem is

> "that it has not been practicable to make the necessary comprehensive detailed investigations with the limited funds which the commission was able to devote to the study of the economic aspects of crime. The attempt will be made in this report to compensate, in part, for the omission of statistical data on losses due to racketeering and certain important aspects of commercialized fraud, by giving a descriptive account of the natue and importance of such loss; but it must be

remembered, in considering this part of the report, that statistical data on the losses due to the most important forms of modern crime are unfortunately missing."[15]

In his part of the study Mr. Simpson has presented statistical material which he has culled from figures as to insured losses which the various insurance companies and their rating bureaus have, after investigation, paid out. Because the sources of these figures are known to be above reproach there is no need to question their accuracy. Unless otherwise stated, other figures which will be presented in the course of this paper will be estimates and as such will indicate merely the general order of magnitude of particular types of losses.

The figures to be quoted as to insured losses due to crime are in all cases minimum figures. Dorr and Simpson explain their position,

"There has been considerable temptation to attempt estimates of total losses on the basis of insured losses; but this has in no case been done. Such 'estimates' would be merely guesses, and it has seemed preferable to give only accurate and reliable figures, even though they are know to be less, and probably very substantially less, than the total losses."[16]

15. National Commission on Law Observance and Enforcement, Vol. 12, op. cit., p. 371-372
16. Ibid., p. 373-374

For the same reason, Dorr and Simpson have made no use of any of the "estimates" of losses due to crime, or to particular kinds of crime, which other men have made in the past. Some of these figures were put forward by men having considerable background and knowledge of insured losses, yet the fact remains that no one, regardless of how well-informed he may be, can do more than guess at the total losses in the existing state of available knowledge and data. The statistical data presented in the survey and which I have reproduced in this paper, while not complete or comprehensive, may, it is believed, be regarded as made up either of exact figures or reasonably accurate estimates.

For our purposes we shall divide crimes against the person into three groups: (a) homicide; (b) mayhem and wounding; and (c) sex offenses. There are many other criminal offenses against the person but because it is difficult to gain an accurate total dollars-and-cents figure for the entire country and because in only a few cases is there a direct loss entailed either to the community or the victim we shall not consider them here. Grouped in this classification might be such offenses as simple assault, criminal libel, and violation of various statutory provisions enacted to protect personal rights from invasion.

Crimes against the person are relatively much less frequent than crimes which affect property or wealth, yet they are by far the most dramatic of all forms of crime. It is, however, rather difficult to place any kind of economic value on these crimes -

some are great, some, little. From a purely materialistic point of view, on the open market all the chemicals in our body make use worth about eighty cents - yet it would be silly to say that that is all any of us are worth. Our individual earning power varies too greatly to be accurately counted in this study. Try as we can, it is impossible for us to calculate any accurate statistics which would give us reasonably satisfactory total figures as to the economic losses which do result from crimes against the person. In homicide cases, there is a possibility that some general idea of the order of magnitude of the loss might be calculated but it is very doubtful that such figures would be regarded as really accurate by all concerned. In the matter of sex offenses some experts doubt that there is an economic loss involved, but in any case it is impossible to measure such loss, assuming that there is one, with any degree of accuracy and in monetary terms.

It is perfectly understable that economic loss is not an adequate measure of the importance of crimes against the person, for when we deal with matters of the importance of crimes against the person, and when we deal with matters of life and personal safety economic considerations are of minor importance.

For purposes of convenience we shall group crimes against property under two general headings: (a) those which involve the destruction of or injury to property; and (b) those involving the taking by the criminal of money or property and converting it to his own use. Included in this first group are such crimes

as arson and a group of offenses which, for the sake of convenience, has been classified under the heading of malicious mischief. The second group includes such crimes as thefts, larceny, robbery, burglary, and embezzlement.

Probably the most important crime which involves the actual destruction of property is arson - the intentional destruction or injury of a building by fire. There is no doubt that there is economic loss because of arson and it can be measured in monetary terms. If a particular fire is proved to be incendiary, there is no difficulty in evaluating the amount of the loss, any more than in determining the value of property destroyed under any other conditions. The problem lies in the difficulty of proving that the fire is of incendiary origin.

The National Board of Fire Underwriters, an organization representing the stock fire insurance companies doing about 88% of the country's fire underwriting business, has data showing fire losses in the United States for the past 70 years. These losses are classified, wherever possible, as to certain specified causes - one of the causes being incendiarism. There are many cases in which the cause of a fire can not be definitely determined and hence, in addition to these classified losses, this board reports a large proportion of losses as due to "unknown causes." Of this large proportion of losses which the board classifies as due to "unknown causes" insurance experts

believe that many are of incendiary origin. In Table I is shown the total fire losses, losses due to incendiarism, and losses due to unknown causes, paid by stock insurance companies in the United States during the 9-year period of 1920-1928.

Table I - Fire losses in the United States, 1920-1928[17]

Year	Total Losses	Losses due to Incendiarism	Losses due to Unknown Causes
1920----	$358,322,951	$1,227,459	$144,207,527
1921----	399,644,683	2,488,976	178,175,794
1922----	405,232,802	2,708,328	185,259,312
1923----	428,187,239	1,662,987	180,262,454
1924----	439,231,553	2,368,301	189,701,941
1925----	447,543,087	2,062,221	199,179,533
1926----	449,584,601	2,202,492	202,369,737
1927----	378,347,175	2,403,615	171,038,429
1928----	371,685,682	2,466,034	170,330,314
Average----	$408,642,197	$2,176,713	$180,058,337

The figures in Table I do not show the entire fire loss of the country, inasmuch as they do not include (a) losses insured by mutual companies, (b) losses insured by stock companies not members of the National Board of Fire Underwriters, nor (c) uninsured losses. Further, they do not include any allowance for the loss of use and occupancy of those buildings destroyed or damaged by fire. Moreover, as I have already indicated, the losses which have been reported as due to incendiarism are minimum figures. And, on the average, this absolute minimum of loss is well over $2,000,000 a year, and the actual loss is probably many times greater.

From the available data it is virtually impossible to show

17. National Commission on Law Observance and Enforcement, Vol. 12, op. cit., p. 380

whether incendiary fires are increasing in number and importance. The ratio of known arson losses to total fire losses showed a considerable rise in 1921 and 1922, when it reached 0.62% and 0.66% respectively, and a similar increase in 1927 and 1928, when the proportion jumped from 0.49% in 1926 to 0.64% in 1927 and 0.66% in 1928, but the variations may be ascribed to causes other than increases amount in incendiarism.

To estimate the total losses arising out of arson on the basis of those figures as to insured losses which are available is almost impossible, because no method has been discovered, as yet, which will determine either what proportion of all property is insured against fire or what proportion of insured losses are due to incendiarism. What we do know is that the economic loss due to arson is important besides being very substantial, and, in all probability, it very likely exceeds by $2,000,000 which represents the average annual insured loss due to known incendiarism.

The general term "malicious mischief" is used in this paper, not in its technical legal sense which is rather different in the various States, but as a compact description of all kinds of criminal acts resulting in the injury or destruction of physical property by other means than fire. Following this definition, the term would therefore include damage to property due to the use of explosives and all other forms of physical force. In many cases this damage or destruction is incident to riot or civil commotion, frequently arising out of labor disturbances, or it

may be closely connected with racketeering or other forms of organized extortion, but may also occur independently of either.

The sole basis for any estimate of the amount of loss due to malicious mischief can be found in the statistics of losses paid by companies which write riot insurance. Table II shows the aggregate of such payments for the 9-year period ending in 1929.

Table II - Riot losses in the United States, 1921-1929[18]

Year	Losses Paid	Year	Losses Paid
1921----	$2,432,403	1926----	$1,756,643
1922----	2,951,828	1927----	2,175,579
1923----	4,829,491	1928----	1,685,806
1924----	3,392,075	1929----	2,406,951
1925----	3,101,125	Average----	$2,747,989

Table II needs a bit of explanation. These figures do not show all losses due to those crimes which we have classified as malicious mischief during the nine year period, 1921-1929. To begin with, included in the figures are losses which have come about through accidental explosions, accidents injuring property occurring in the course of civil commotion rather than by criminal acts. Insofar as insured losses due to malicious mischief are concerned, these figures are, therefore, much too large. But set against this is the fact that throughout the country only a minor proportion of the property is covered by riot insurance, so that, so far as total losses due to malicious mischief are concerned, the figures, in all likelihood, are much too low.

18. National Commission on Law Observance and Enforcement, Vol. 12, op. cit., p. 382

Although it is impossible to state definitely what the total loss due to malicious mischief is, it is undoubtedly large.

The most common private losses due to crime are the result of some form of theft, either simple larceny, such as pocket-burglary, or robbery. These various kinds of theft made up 94.6% of all offenses known to the police as reported to the Department of Justice for 1930, and they are the most serious criminal offenses.

In general, we may say that there are three sources of figures as to losses due to larceny, burglary, and robbery: (a) the insurance companies' figures as to losses paid; (b) figures collected by some trade organizations as to losses ascertained by their members, whether insured or not; and (c) figures reported by certain police departments as to the estimated value of the property stolen in cases where the theft is reported to the police. In the first class the figures are known to be exact, but they cover only insured losses; in the second class the figures are also reliable and cover all losses, but these are also available only for a few kinds of businesses; as regards the third class the figures can not be regarded as reliable.

Most criminologists doubt the accuracy of police figures as to losses for three reasons: First, in most cases they are based entirely on the unverified statements of the victims of

the thefts, who in many cases have no accurate idea of the value of the property stolen from them, or sometimes even as to the amount of money stolen from them. Second, the present facilities of most police departments are not such that accurate recording and reporting of statistics can be insured. Even police statistics as to the numbers of known offenses are regarded as unreliable. Third, there is likely to be considerable temptation to keep figures as to the value of property stolen down as low as possible. This situation will be found to be particularly true in places where a police department is attempting to build up a record of apparent efficiency. The Boston Post, in one of its columns called "Gossip of the Town", had this to say,

> "Police chiefs of great American cities, one of the boys tells us, can, and often do, doctor up their criminal reports to give their towns a milk-pure complexion. It's done like this:
>
> "Bandits smash a jeweller's window and steal a fortune in jewels. This calls for a 'felony report.' That is: 'Breaking and entering in the night-time and larceny.' But the police chief who does not want this black eye on his record has a neat way out.
>
> "The window smashing is called an 'accident.' The report of the 'accident' goes on to say that there was a statement of the theft of some jewels and that this is 'being investigated.' When the report of the full activities of the force at the end of the year is pub-

lished this episode is still under the head of accidents and the 'reported theft' is still 'under investigation.' So that statistically there's been no felony. 'Look at the record and see for yourself.'

"P. S.: If the thief or thieves are caught, then the police chief is safe in calling it a felony because he solved the crime and the thing is a bang-up victory for him. (It seems there are statistics and statistics.)"[19]

In dealing with data as to value, which are at best only rough estimates, the total figures may be "adjusted" in almost any way desired. In view of these possible sources of serious error in the data, no figures as to the losses due to theft based on police figures as to the value of stolen property have been presented in the Dorr and Simpson report.

Discounting, then, police statistics we have two sources of statistical data - the insurance companies and certain trade organizations, and figures have been secured from both these sources. Included in the insurance figures are quite complete data on insured losses due to thefts of goods, money, and automobiles. The figures obtained from trade organizations include comprehensive data as to total losses, whether insured or not, sustained by banks, jewelers, or railroad companies. All these

19. The Boston Post, April 21, 1937

figures may, I believe, be regarded as reliable, although, of course, they are far from being all-inclusive. The general field of uninsured losses with the exception of those covered by trade organizations, is one for which no figures are available and no estimate is possible. Thus, the available figures merely indicate minimum losses due to thefts of property.

It is my intention to present the figures available in the following order: (a) data as to losses sustained by banks due to burglaries and holdups; (b) data as to losses sustained by jewelers due to burglaries, holdups, and sneak thefts; (c) data as to losses sustained by railroads due to freight thefts; (d) data as to insured losses due to automobile thefts; and (e) data as to insured losses due to burglaries, robberies, and larcenies other than automobile thefts.

Bank Losses - For several years the American Bankers Association, comprising some 72% of the banks of the country, with resources amounting to about 85% of all bank resources, has followed the practice of requiring all member banks to submit data as to the number of burglaries and robberies sustained and ammounts lost as a result of such crimes which it has compiled and made available to those interested in the subject. Besides its own members many non-member banks are cooperating with them in their survey. Table III gives these statistics for the 10-year period ending August 31, 1930.

Table III - Losses due to bank burglaries and robberies, 1921-1930[20]

Year	Burglaries		Robberies		Total Loss
	Number	Loss	Number	Loss	
1921----	220	$287,745	136	$ 936,752	$1,224,497
1922----	261	249,301	145	905,669	1,154,970
1923----	150	176,638	129	459,693	636,331
1924----	104	264,528	236	1,074,456	1,338,984
1925----	98	244,966	225	1,676,204	1,921,170
1926----	54	248,869	203	1,345,235	1,594,104
1927----	92	185,560	227	2,010,767	2,196,327
1928----	70	156,999	292	1,762,703	1,919,702
1929----	52	134,960	307	1,538,616	1,673,576
1930----	40	102,694	402	2,003,391	2,106,085
Average----	114	$205,226	232	$1,371,349	$1,576,575

Figures as to insured losses due to bank burglaries and robberies are available from insurance companies for the years 1923-1929, inclusive. These statistics are shown in Table IV.

Table IV - Insured losses due to bank burglaries and robberies, 1923-1929[21]

Year	Burglaries		Robberies		Total Loss
	Number	Loss	Number	Loss	
1923----	423	$356,869	261	$ 571,042	$ 927,911
1924----	350	365,449	270	626,528	991,977
1925----	208	294,959	208	572,743	867,702
1926----	221	178,967	251	964,024	1,142,991
1927----	188	217,685	273	976,924	1,194,609
1928----	191	143,592	284	1,065,507	1,209,099
1929----	168	79,328	330	894,888	974,216
Average----	250	233,836	268	810,236	1,044,072

Comparing Tables III and IV shows that the number of losses due to bank burglary and robbery reported to, and, in the case of burglary, the amount of losses paid by, the burglary insurance companies of the country exceeds the number of offenses and amount of losses compiled as totals by the American Bankers Asso-

20. National Commission on Law Observance and Enforcement, Vol. 12, op. cit., p. 385
21. National Commission on Law Observance and Enforcement, Vol. 12, op. cit., p. 386

ciation for the same period. There seems to be two reasons for this: (a) Insurance figures include attempted robberies and burglaries, where any damage to bank property is claimed, in the total number of offenses reported, and include as well the amount of indemnity paid for such damage, which is covered by the standard bank robbery and bank burglary policies, in the total losses; the figures of the American Bankers Association, however, include only burglaries and robberies actually carried through to completion and amounts of money and negotiable securities actually stolen. (b) Most burglary and robbery policies are carried by small rural banks, which in many cases do not belong to the association. The figures which the association has compiled while they are 98% complete as regards its members, are at the most 90% complete as to nonmembers, so that a substantial number of insured losses are, in all probability, not included in the association's figures. It may be contended, therefore, that we may rely on both sets of figures - those compiled by the American Bankers Association as showing the losses of money and negotiable securities by members and reporting nonmembers due to actual burglary and robbery, those of insurance companies as indicative of insured losses and damages of all kinds due to actual burglary and robber. But regardless of which set of figures is considered, it is clear that bank burglaries and holdups cause an average loss in excess of $1,000,000 per year.

Losses by Jewelers - The Jewelers Security Alliance collects data as to thefts from its members and as to all thefts

from jewelers, whether members or not, which are reported in trade publications. Table V gives the data compiled by the Alliance as to the number of thefts from jewelers of various classes and the value of the property stolen for the 9-year period ending in 1929.

TABLE V - INSURED LOSSES DUE TO THEFTS FROM JEWELERS, 1921 - 1929[22]

YEAR	SAFE BURGLARIES		STORE BURGLARIES		WINDOW BURGLARIES		SNEAK THEFTS		HOLDUPS		TOTAL LOSS
	No.	Loss	No.	Loss	No.	Loss	No.	Loss	No.	Loss	
1921	43	$225,446	228	$282,190	344	$187,704	225	$166,097	133	$979,118	$1,840,575
1922	35	245,900	217	128,600	234	159,700	150	115,500	141	824,000	1,473,700
1923	48	450,000	207	175,000	293	300,000	195	250,000	117	800,000	1,975,000
1924	55	480,000	273	461,600	308	179,800	162	138,600	202	2,123,000	3,383,400
1925	30	189,495	189	339,190	295	162,240	152	152,868	205	2,304,965	3,148,758
1926	40	459,206	173	208,274	320	256,588	145	155,738	99	559,284	1,639,090
1927	33	1,212,326	127	231,447	243	146,930	135	155,945	100	576,325	2,322,973
1928	23	236,600	154	194,143	258	150,593	185	132,851	91	883,749	1,597,936
1929	30	183,520	142	142,887	253	137,895	156	271,693	77	517,579	1,253,574
AVERAGE	37	409,213	190	240,370	283	186,828	167	171,032	129	1,060,891	2,068,334

22. NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT, VOL. 12, op. cit., p. 388

While the figures presented in Table V can not be regarded as being of the same degree of accuracy as those previously given as to bank losses, inasmuch as they are based in part on estimates of losses appearing in trade publications, it is believed that they give a reasonably accurate idea of the approximate amount of losses due to thefts from jewelers. The figures show that such losses have averaged in excess of $2,000,000 per year during 1921-1929, but have been decreasing since 1927.

In one of its feature stories on jewelry thefts the Boston Traveler had this to say,

> "Few realize the tremendous losses incurred annually through jewel thefts. A leading jewelry trade journal estimates that the nation now pays $20,000,000 tribute annually to the underworld through gem robberies. The federal bureau of investigation estimates that in the first nine months of 1936 in 39 cities of over 100,000 population a total of $1,393,000 worth of jewels and precious metals were stolen. Of this $306,000 worth was recovered- only 21.9% of the total."[23]

Railroad Losses - The American Railway Association, like the other trade organizations, collects and compiles figures as to the amount paid out by the railroads to the various shippers as the result of freight thefts. Table VI shows the losses of

23. The Boston Traveler, March 18, 1937

this character for the 10-year period, 1920-1929.

Table VI - Losses due to theft of railroad freight, 1920-1929[24]

Year	Loss	Year	Loss
1920----	$12,726,947	1926----	$1,314,501
1921----	9,924,747	1927----	1,151,136
1922----	4,806,710	1928----	928,563
1923----	3,117,484	1929----	757,803
1924----	2,333,393	Average----	$3,855,374
1925----	1,492,451		

Table shows that losses due to freight thefts from railroad custody have steadily decreased each year since 1920 although they have averaged over $3,800,000 per year for the period 1920-1929, and in 1929, were still over $750,000.

Automobile Thefts - No total figures are available as to losses due to automobile thefts, but, through the cooperation of the National Automobile Underwriters Association, substantially complete data as to insured losses have been gathered. Table VII gives the total number of automobiles in the United States, the number and percent insured, the number and percent stolen, the number and percent stolen and recovered for the 5-year period ending in 1929.

24. National Commission on Law Observance and Enforcement, Vol. 12, op. cit., p. 389

Table VII - Automobiles stolen and recovered, 1925-1929[25]

Year	Number of Automobiles	Number Insured	Percent Insured	Number Stolen	Percent of Total	Number Recovered	Percent of Number Stolen
1925--	19,954,347	2,838,304	14.2	45,316	0.23	28,840	63.7
1926--	22,001,393	3,262,770	14.8	49,325	.22	31,972	64.9
1927--	23,133,241	3,276,047	14.2	48,164	.21	35,814	74.4
1928--	24,493,124	3,370,981	13.7	58,182	.24	46,075	79.2
1929--	26,501,443	4,880,204	18.5	59,505	.23	51,943	87.3
Average--	23,216,710	3,525,661	15.2	52,098	.22	38,929	74.7

Table VIII shows the number of cars stolen and not recovered, the net insured losses paid - that is after the amount realized on stolen cars which recovered were deducted, and the relation of the net losses paid to the total insurance for the 6-year period ending in 1930.

Table VIII - Insured losses due to automobile theft, 1925-1930[26]

Year	Cars Stolen and Not Recovered	Losses Paid	Losses per $1000 Insurance in force
1925-----	16,476	$19,341,251	$6.05
1926-----	17,353	20,237,719	5.90
1927-----	12,350	16,659,118	4.92
1928-----	12,107	14,202,165	4.53
1929-----	7,562	11,548,263	2.20
1930-----	(1)	13,000,033	2.62
Average-----	(2) 13,170	15,831,425	4.07

(1) Figure not yet available; (2) For 5 years only

Thus we see that insured losses due to automobile theft have averaged well over $15,000,000 per year for the 6 years ending in 1930. These losses seem to have been somewhat on the decline since 1926, although there was an increase in 1930 over the previous year. While only 15.2% of all automobiles were

25. National Commission on Law Observance and Enforcement, Vol. 12, op. cit., p. 390
26. Ibid., p. 390

insured, on the average, during this period, it can not be assumed that the $15,800,000 is 15.2% of the total loss due to automobile theft. Many uninsured automobiles are old and cheap cars, and are least often stolen. It is probable, therefore, that much more than 15.2% of all automobile thefts, both in the value and number of cars stolen, involve insured cars. It is wholly impossible to determine what proportions of cars that are stolen are insured, and therefore no estimate of total losses on the basis of insured loss can be made. The most that can be said is that net losses due to automobile thefts averaging over $15,000,000 per annum have been paid by insurance companies over the 6-year period 1925-1930, and that that aggregate loss, insured and uninsured, must be substantially in excess of this figure.

Insurance Losses Generally - Having already presented figures which show the insured losses due to bank robbery and burglary and to automobile theft, we next take into consideration the other insured losses caused by the various types of larceny, burglary, and robbery. Six types of theft insurance, in addition to bank, burglary and robbery and automobile theft coverage, must be distinguished: (a) residence burglary, theft, and larceny; (b) mercantile open stock burglary; (c) mercantile safe burglary; (d) office and store robbery; (e) messenger robbery; and (f) paymaster robbery. The National Bureau of Casualty and Surety Underwriters has compiled statistics as to the net insurance losses due to these types of theft and I present them here in Tables IX to XIV inclusive. The tables show the number of in-

sured losses, the amount of the losses, and the loss frequency - that is, the number of losses per $100,000 insurance in force and affords a measure of the relative frequency of losses in different years which takes account of variations in the amount of property insured - by years for the 7-year period ending in 1929.

Table IX - Insured losses due to residence burglary, theft, and larceny, 1923-1929[27]

Year	Losses Reported	Total Loss	Loss Frequency
1923------	17,754	$3,714,596	3.2
1924------	20,778	4,395,619	3.0
1925------	19,169	4,282,509	2.5
1926------	18,883	3,852,806	2.3
1927------	20,968	4,159,852	2.4
1928------	21,108	4,408,914	2.3
(1)1929------	23,264	4,474,394	2.4
Average------	20,275	$4,184,099	2.6

(1) Subject to adjustment

Table X - Insured losses due to mercantile open stock burglary, 1923-1929[28]

Year	Losses Reported	Total Loss	Loss Frequency
1923------	2,526	$2,049,673	1.5
1924------	2,857	2,314,241	1.5
1925------	2,494	2,028,583	1.2
1926------	2,056	1,446,023	1.0
1927------	1,971	963,914	1.0
1928------	1,970	1,012,406	1.1
(1)1929------	2,228	1,275,490	1.3
Average------	2,300	1,584,333	1.1

(1) Subject to adjustment

27. National Commission on Law Observance and Enforcement, Vol. 12, op. cit., p. 392
28. Ibid., p. 392

Table XI - Insured losses due to mercantile safe burglary, 1923-1929[29]

Year	Losses Reported	Total Loss	Loss Frequency
1923----	2,349	$ 723,836	1.3
1924----	3,482	1,220,688	1.5
1925----	3,068	1,042,938	1.2
1926----	2,886	1,072,443	1.0
1927----	2,943	937,801	.9
1928----	3,093	966,984	1.0
(1)1929----	3,146	928,714	.9
Average----	2,995	$ 984,915	1.1

(1) Subject to adjustment

Table XII - Insured losses due to office and store robbery, 1923-1929[30]

Year	Losses Reported	Total Loss	Loss Frequency
1923----	2,097	$ 664,524	1.1
1924----	3,079	1,216,028	1.2
1925----	2,687	1,073,868	.9
1926----	2,980	880,169	.9
1927----	3,187	883,321	1.0
1928----	3,712	973,511	1.0
(1)1929----	4,474	1,077,898	1.2
Average----	3,140	$ 957,029	1.0

(1) Subject to adjustment

Table XIII - Insured losses due to paymaster robbery, 1923-1929[31]

Year	Losses Reported	Total Loss	Loss Frequency
1923----	99	$194,335	0.1
1924----	141	201,917	.1
1925----	177	380,404	.1
1926----	119	250,595	.1
1927----	99	164,442	.1
1928----	133	223,368	.1
(1)1929----	150	213,086	.1
Average----	131	$232,592	.1

(1) Subject to Adjustment

29. National Commission on Law Observation and Enforcement, Vol. 12, op. cit., p. 392
30. Ibid., p. 393
31. Ibid., p. 393

Table XIV - Insured losses due to messenger robbery, 1923-1929[32]

Year	Losses Reported	Total Loss	Loss Frequency
1923----	849	$401,530	0.4
1924----	1,307	663,926	.5
1925----	1,059	568,898	.3
1926----	902	383,412	.3
1927----	928	399,536	.3
1928----	1,110	444,036	.3
(1)1929----	1,308	563,536	.4
Average----	1,066	$489,268	.4

(1) Subject to adjustment

Table XV brings together statistics as to all classes of insured losses, except personal holdup insurance, including those due to insured bank burglaries and robberies and to the theft of insured automobiles, showing the total net losses of each class for the 5-year period from 1925 to 1929 inclusive.

32. National Commission on Law Observance and Enforcement, Vol. 12, op. cit., p. 393

TABLE XV - SUMMARY OF INSURED LOSSES DUE TO THEFT, 1925-1929 [33]

YEAR	RESIDENCE BURGLARY AND THEFT [1]	MERCANTILE OPEN STOCK BURGLARY [2]	MERCANTILE SAFE BURGLARY [3]	OFFICE AND STORE ROBBERY [4]	MESSENGER ROBBERY [5]	PAYMASTER ROBBERY [6]	BANK BURGLARY AND ROBBERY [7]	AUTOMOBILE THEFT [8]	TOTAL LOSS
1925	$4,282,509	$2,028,583	$1,042,938	$1,073,868	$568,898	$380,404	$867,702	$19,341,251	$29,586,153
1926	3,852,806	1,446,023	1,072,443	880,169	383,412	250,595	1,142,991	20,337,719	29,366,158
1927	4,159,852	963,914	937,801	883,321	399,536	164,442	1,194,609	16,659,118	25,362,593
1928	4,408,914	1,012,406	966,984	973,511	443,036	223,368	1,209,099	14,202,165	23,440,483
1929	4,474,394	1,275,490	928,714	1,077,898	563,536	213,086	972,216	11,548,263	21,053,597
AVERAGE	4,235,695	1,345,283	989,776	977,753	471,884	246,379	1,077,323	16,417,703	25,761,797

1. FROM TABLE IV, supra.
2. FROM TABLE V, supra.
3. FROM TABLE VI, supra.
4. FROM TABLE VII, supra.
5. FROM TABLE IX, supra.
6. FROM TABLE XIII, supra.
7. FROM TABLE II, supra.
8. FROM TABLE VIII, supra.

33. NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT, VOL. 12, op. cit., p. 394

Thus we find that insured losses due to theft have averaged well over $25,000,000 per year for the 5-year period 1925 to 1929. Of course, it is understood that there is no satisfactory method of computing total losses on the basis of insured losses, and hence we find it is impossible to guess the total loss due to the various forms of theft, although it is clear that the loss exceeds, and in all probability very substantially exceeds, $25,000,000 per year.

Losses due to Mail Thefts - While the losses suffered by the United States as a result of robberies, burglaries, and other thefts of mail are not private losses, they are losses to the Federal Government in its capacity as proprietor which are analogous to private losses. Since 1921 data as to such losses have been available, and are presented here for purposes of comparison with the figures given above as to private losses of similar character. Table XVI gives the aggregate losses of the Post Office Department for the 10-year period ending June 30, 1930, due to burglary, robbery, and other thefts of mail involving a loss of $5,000 or more or the death of an employee.

Table XVI - Losses due to mail thefts, 1921-1930[34]

Year	Gross Loss	Recoveries	Net Loss
1921-----	$6,542,697.48	$3,852,915.87	$2,689,781.61
1922-----	2,532,403.00	1,407,331.00	1,125,072.00
1923-----	2,506,308.00	2,366,366.00	139,942.00
1924-----	2,509,157.00	1,467,444.00	1,041,713.00
1925-----	280,709.00	125,803.00	154,906.00
1926-----	1,408,540.00	761,627.75	646,912.25
1927-----	686,287.00	254,925.21	431,361.79
1928-----	445,755.00	150,102.00	295,653.00
1929-----	308,888.00	127,395.00	181,493.00
1930-----	128,109.00	31,500.00	96,609.00
Average-----	$1,734,885.35	$1,054,540.98	$ 680,344.37

Although the figures given in the above table do not include all losses due to mail thefts, they do include all the more important losses. The average net loss per year for the period 1921-1930 has been over $680,000, and the average net loss for the period 1926-1930, about $330,000. Such losses are relatively small in amount and seem to be definitely on the wane.

Embezzlement - Embezzlement may be generally defined with sufficient accuracy for our purposes as the unlawful conversion to his own use b y an agent or employee of money or property entrusted to his custody.

> "It differs from theft principally in that the original possession of the stolen property by the embezzler is entirely proper, becoming unlawful only when he commits a breach of trust by taking or using the property for his own purposes."[35]

34. National Commission on Law Observance and Enforcement, Vol. 12, op. cit., p. 395
35. Ibid., p. 396

The Towner Rating Bureau has compiled rather complete data as to net insured losses due to embezzlement and they are presented in Table XVII.

Table XVII - Insured losses due to embezzlement, 1925-1929[36]

Year	Losses Paid
1925----	$12,916,316
1926----	15,541,329
1927----	16,746,103
1928----	20,177,139
1929----	20,626,231
Average----	$17,201,422

These figures as to insured losses due to embezzlement do not, of course, give any indication, of the amount of total losses. To begin with, while fidelity insurance is becoming increasingly common, it is by no means universal, and many defalcations are not covered by such insurance at all. Secondly, even where the defaulting employee is bonded, the amount of insurance carried is, in many cases insufficient to cover the entire loss. There is no way of estimating total losses on the basis of insured losses, and the most that can be said is that the average loss to private individuals and business organizations due to embezzlement is in all probability very substantially in excess of $17,000,000 per year.

Although fidelity insurance covers all sorts of defalcations, including forgery, the losses by forgery are so small

36. National Commission on Law Observance and Enforcement, Vol. 12, op. cit., p. 396

that the figures given in Table XVII may be safely said to indicate the approximate amount of insured losses due to embezzlement alone.

We are forced to conclude that direct crimes against property obviously cause losses to the victims of such crimes and there is no theoretical difficulty in evaluating those losses in pecuniary terms. While we have figures as to the total losses only for a limited number of industries, and although it is impossible to estimate total losses on the basis of insured losses paid, available figures clearly show that such losses are most substantial. On the basis of the experience of the 5-year period ending in 1921 the ban ks of the country lose over $1,800,000 per year due to burglary and robbery; jewelers lose almost $2,000,000 on account of burglaries, holdups, and sneak-thefts; and railroads lose on the average of over $1,100,000 a year due to thefts of freight. The figures as to insured losses generally are even more significant. Table XVIII summarizes insured losses due to known arson, riot, automobile theft, other forms of theft, and embezzlement for the 5-year period 1925-1929, inclusive.

TABLE XVIII - SUMMARY OF INSURED LOSSES DUE TO DIRECT CRIMES AGAINST PROPERTY, 1925-29[37]

YEAR	KNOWN ARSON[1]	RIOT[2]	AUTOMOBILE THEFT[3]	OTHER THEFT[4]	EMBEZZLEMENT[5]	TOTAL
1925	$2,062,221	$3,101,128	$19,341,251	$10,244,902	$12,916,316	$47,665,818
1926	2,202,492	1,756,643	20,237,719	9,028,439	15,541,329	48,866,622
1927	2,403,615	2,175,579	16,659,118	8,703,475	16,746,103	46,687,890
1928	2,466,034	1,685,806	14,202,165	9,238,318	20,177,139	47,769,462
1929	(6)	2,406,951	11,548,263	9,505,334	20,626,231	———
AVERAGE	(7) 2,283,591	2,225,221	16,397,703	9,344,094	17,201,422	(7) 47,747,448

1. FROM TABLE I, supra.
2. FROM TABLE II, supra.
3. FROM TABLE VIII, supra.
4. FROM TABLE IV, supra.
5. FROM TABLE XVII, supra.
6. NOT AVAILABLE
7. AVERAGE FOR 4-YEAR PERIOD, 1925-28, INCLUSIVE

37. NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT, VOL. 12, op. cit., p. 398

It, therefore, appears that insured losses which can be said to be due to known direct crimes against property average more than $47,000,000 per year. The actual bases are undoubtedly much greater since we do not include in the $47,000,000 (a) losses not covered by insurance at all which are without doubt numerous and substantial; (b) the excess loss in cases where the amount of insurance carried is less than the value of the property taken or destroyed; nor (c) losses covered by insurance where the loss is due to an undetected crime, as is often the situation in the case of arson. As has been repeatedly stated, there is no way of estimating total losses on the basis of insured losses; all that we can say with regard to the aggregate total loss due to direct crimes against property is that this loss is in all probability very substantially greater than the insured loss. For we must realize that the insured loss of $47,000,000 due to known direct crimes against property is thus merely a minimum, and, most likely, a very low minimum, insofar as total losses are concerned.

We have, up to this point, considered the economic effects upon the victims of these criminal acts directed either against their person or against their property or specific money belonging to them. Now we can turn to a different class of crimes - those which impair the wealth of individuals or organizations and, in this way, have much the same economic effect as do direct crimes against property, but which do so by causing the victims of such crimes to give up money or property by their own

act, either as a result of fraud or intimidation, or, in some cases, without their being aware that they are being injured. The two principal forms of crime of this type are (a) various kinds of commercialized fraud, and (b) racketeering and extortion.

Among the characteristics that these forms of criminal conduct have in common are that they obtain money through the voluntary, in the sense of intentional, act of the victim; and that they ordinarily are forms of crime - of crime as a definite day-to-day business. This latter is particularly true of such forms of commercialized fraud as stock swindles and of almost all racketeering activities. The distinction is not a very sharp one, since many direct crimes against property are committed by persons who are "in the business" and often are systematically committed as a regular branch of the activities of a gang which is engaged in racketeering proper as well, while many criminal frauds are committed in isolated and rare cases; but, for the most part, both commercialized fraud and organized extortion involve a greater degree of permanent organization than do the ordinary run of incendiary fires, burglaries, larcenies, and embezzlements. We shall, therefore, deal primarily with private tribute paid to crime as a business.

There are certain forms of losses due to crime which are not directed against specific property, in addition to fraud and racketeering, and which might also have been dealt with under this general heading, but which have been omitted because the

acts which are involved are not universally regarded as criminal. The principal omission of this character is the loss due to gambling, for although gambling, in some forms, is a statutory misdemeanor in most states, it is by no means universally regarded as criminal.

> "The difficulty in distinguishing between (a) losses due to forms of gambling not made criminal by statute, which clearly can not be regarded as private losses due to crime; (b) losses due to technically criminal gambling of sorts not generally regarded by the public as malum in se, which are only technically due to crime; and (c) losses due to fraudulent gambling games, which clearly are due to crime, would be almost impossible as a practical matter."[38]

For somewhat different reasons losses due to official extortion from persons engaged in illegal activities - as for example, bootlegging - are not dealt with in this study. While the money so extorted is obtained in violation of the criminal law, the loss causes is different in character from the ordinary losses to criminals by law-abiding citizens. Because of this reason and also because of the tremendous practical difficulties involved in securing any reliable data on the subject, the amounts lost by those engaged in these illegal enterprises due to

38. National Commission on Law Observance and Enforcement, Vol. 12, op. cit., p. 399-400

extortion of "protection money" by the offials administrating the criminal law and the loss due to the activities of other criminals - "hi-jacking," etc., - are not dealt with in this portion of the Dorr and Simpson study, which is confined to a discussion of losses due to crimes other than those suffered by persons engaged in criminal enterprises because they are so engaged.

The only figures available on this subject deal with losses due to mail frauds, which on the basis on Post Office Department figures, appear to average more than $68,000,000 annually. However, we can say, without fear of exaggerating, that the losses due to commercialized fraud and racketeering are enormous, and most likely far exceed those due to any other form of crime. But statistics as to losses of this type are extremely difficult to develop, and no comprehensive figures exist. All we can say is to repeat my previous statement - the losses due to commercialized fraud and racketeering are enormous, and most likely exceed those due to any other form of crime.

Because of the lack of definite statistics, due in a large part to poorly kept police records and a desire on the part of the powers that be in police forces to have a good record,[39] it is most difficult to get an accurate picture of the number of reported crimes as compared with the number of arrests, convictions, and finally sentences which have been executed.

39. P. 30-31, supra.

The Bureau of Census of the Department of Commerce does, however, record annual statistics of the number of prisoners in both federal and state prisons and reformatories, and classifies them by states and federal committments, by states, by sex, and by offense.[40] This study does offer some interesting facts, for it gives the exact number of criminals committed.

In the Wickersham Report are listed the losses reported to the various insurance companies and for which they have paid out money. Unfortunately these losses are not reported for all crimes. They are reported for all burglaries, holdups, and larcenies with the exception of railroad freight theft and automobile theft. The average number of offenses reported in the Wickersham Report for all types of burglary, robbery, and larceny was 31,577 per year up to 1930. From the Bureau of Census reports for the years 1926-1930 inclusive the annual number of committments to federal and state prisons for the same offenses averaged 8,208; or almost 26% of the reported number.

A closer analysis reveals that according to these statistics each prisoner committed on the average of four crimes before he was caught. While I feel that there is much to be desired in the "crook-catching" activities of many of our police forces, I can not be brought to believe that over 8,000 thieves commit an average of four crimes each before they are caught. Neither do I think that our police are so poorly trained and

40. "Prisoners in State and Federal Prisons and Reformatories." Bureau of the Census, Department of Labor, Government Printing Office, Washington, D. C.

equipped that they can not catch some before they commit their four crimes and that others "get away with murder" and commit many more than four crimes before being caught. The "masterminds" among the thieves who can commit more than two or three crimes before being caught are few and far between. If my contention is true, there are a number of crimes being committed which are going unpunished. Furthermore, our statistics do not show whether those convicted were members of a "gang" who were caught after they had committed only one or two crimes whereas singly they would have committed, according to the law of averages, many times one or two crimes. The lack of statistics in a problem like that under discussion hampers one very much when he tries to set up a comparison between the amount of crimes committed and the number of commitments. For were statistics of the required kind available it would be an easy matter to determine the extent of unpunished crime. In view of the lack of such statistics the author is forced to conclude that it is impossible, without better statistics, to determine the exact extent of unpunished crime in the United States. It can only be stated that this problem does exist.

Figures as to losses due to embezzlement also reveal much interesting data. The average annual number of commitments for the period 1927-1930 is 447 while the losses averaged $17,201,422 per year. This would mean that each embezzler took, on the average, the sum of $38,486, although it is estimated by bonding company experts that the average sum embezzled is much less than

$38,486 and nearer $5,000. However, paradoxical as it may seem, not all known embezzlers are punished. This situation exists because in very many cases the people who have been embezzled are loathe to prosecute the embezzler after the money has been returned, for they feel that now that he has been found out he will be sufficiently punished because he will not be able to get any kind of work with that charge hanging over his head.

The Post Office Department has figures which give us a faint idea of how much crime escapes punishment with regard to using the mails to defraud. Table XIX shows the estimated losses due to the use of the mails to defraud, but of especial interest are the columns headed "Indictments" and "Conviction."

Table XIX - Estimated losses due to use of mails to defraud, 1924-1930[41]

Year	Indictments	Convictions	Losses (Estimated)
1924------	(1)	(1)	$105,539,271
1925------	937	611	56,140,627
1926------	968	620	98,764,968
1927------	961	486	124,770,118
1928------	1,033	713	54,146,699
1929------	950	628	28,597,684
1930------	(1)	(1)	14,481,076
Average------	(2) 970	(2) 612	68,634,342

(1) No data furnished
(2) Average for 5-year period ending in 1929

41. National Commission on Law Observance and Enforcement, Vol. 12, op. cit., p. 405

From this table we learn that although the grand juries returned 970 indictments which meant that they felt that the person under trial was guilty, the prosecuting attorney could only get 612 convictions or less than two-thirds. It may have been, of course, that the other 358 had a strong enough case to convince the trial jury that they were innocent, and in the eyes of the law they are innocent of the crime with which they have been charged. However, we cannot escape the fact that a grand jury felt that there was enough evidence to hold these 358 for a charge of using the mails to defraud. Nor does the explanation account for an annual loss of over $68,500,000.

We can get figures which give the ratio of arrests to certain crimes known to the police in several American cities from Morris' "Criminology".

Table XX - Ratio of arrests to certain crimes in several American cities, 1924.[42]

Place	Burglary	Embezzlement	Forgery	Larceny	Man-Slaughter	Murder	Robbery
Baltimore, Md.	21%	73%	31%	25%	62%	74%	47%
Buffalo, N. Y.							3%
Cleveland, O.	35%			47%	96%	73%	49%
Kansas City, Mo.	5%					72%	23%
New York, N. Y.	14%						
Rochester, N. Y.	12%						30%
St. Louis, Mo.	8%	17%	8%	6%		32%	11%
Schenectady, N. Y.	17%						10%
Syracuse, N. Y.	7%						

And again from Morris,

> "In New York State, although many stolen cars are recovered, arrests are rarely made in more than 10% of the cases reported."[43]

These may seem to be merely scattered instances of unpunished crimes but when we multiply the statistics for one large city by the total number of large cities in the country we arrive at a substantial sum.

The Bureau of Census in the Department of Commerce publishes annually a pamphlet called "Judicial Criminal Statistics" which is filled to overflowing with valuable data on crim-

42. Morris, op. cit., p. 258
43. Ibid., p. 258

inal statistics obtained from annual reports of twenty-five states and from federal government figures. These twenty-five states comprise 42.8% of the population of the United States. Table XXI shows the number of defendants disposed of in 1934 without conviction by the method of disposition.

Table XXI - Eliminations without conviction, by method of disposition.[44]

	Defendants Disposed of		Defendants Not Convicted	
	Number	Percent	Number	Percent
Total Defendants Disposed of	139,928	100.00	------	-------
Disposed of Without Conviction	42,563	30.4	42,563	100.00
Dismissed By Prosecution--	22,801	16.3	22,801	53.6
Dismissed By Court on Motion of Defense--	2,139	1.5	2,139	5.0
Jury Waive, Acquitted By Court-----	2,194	1.6	2,194	5.2
Acquitted By Jury----------	9,628	6.9	9,628	22.6
Never in Custody----------	1,670	1.2	1,670	3.9
Other No-Penalty Dispositions----	4,131	3.0	4,131	9.7

The cases eliminated through some action for which the prosecution is primarily responsible are grouped under the heading "Dismissed by prosecution." These eliminations may either occur through a formal nolle prosequi issued by the prosecutor, or through some other similar device. There are some States in which judicial sanction must be obtained for the nolle prosequi, but in most States it can be used on the sole initiative and responsibility of the prosecutor himself.

44. "Judicial Criminal Statistics-1934", Department of Commerce, Bureau of the Census, Government Printing Office, Washington, D. C., 1936, p. 7

Under the heading "Never in custody" are grouped those cases in which the defendant has been indicted or formally charged by an information filed by the prosecutor, but because of the inability of the police to arrest the accused and bring him within the power of the court the prosecution has been unable to proceed.

The last grouping "Other no-penalty dispositions" contains many different types of dispositions, including transfers to other courts, changes in venue, acquittals or dismissals on the grounds of insanity, and cases where the defendant has either died or jumped his bail.

The principal method of eliminating cases without conviction is the dismissal of the defendant on the initiative and responsibility of the prosecuting authorities. In the twenty-five states studied, 53.6% of the total number of eliminations were by the prosecution. This figure represents one-sixth of all the defendants whose cases were disposed of by the courts in 1934. The nolle prosequi power of the prosecution is a significant factor in the elimination of criminal cases without conviction in every state. In thirteen of the twenty-five states, over one-fifth of all the defendants disposed of during 1934 had their cases nolle-prossed by the prosecution; and in seventeen of the twenty-five states, dismissals by the prosecution account for over 60% of the eliminations without conviction. Of course, some of those eliminated by the prosecution are dismissed in the interests of justice; and this power was given to the prosecutor

so that he might be allowed to use his discretion to insure the administration of justice, but the nolle-prossing has been subject to much abuse. While there is no way to find out what proportion of those whose cases have been nolle-prossed are guilty, it is admitted by most students of the problem that among those cases that have been nolle-prossed are many which result in the guilty person being set free.

These facts indicate the tremendous importance of the prosecutor's office for the administration of criminal justice. In many of the cases which the prosecutor dismisses, either an inferior court or a grand jury, or both, have found that there was a prima facie case against the accused. For reasons which satisfied him, however, the prosecutor quashed the proceedings by merely refusing to prosecute. In many states this action is within the prosecutor's discretion, however, in other states, as we have seen, judicial sanction is required prior to dismissal. This action, however, is not the check it seems for the judges are prone to depend upon the prosecutor for information about cases coming before them, and they usually ratify the prosecutor's decision not to prosecute without any independent investigation of the facts on their own part.

According to the various crime surveys, it is a common practice to convict the accused of lesser offenses than the ones originally tried. "Of 100 defendants charges with felonies in New York City and Chicago in 1926, 81 and 75, respectively, were convicted of lesser offenses than the one originally charges

(National Commission on Law Observance and Enforcement, Vol. 4, p. 186, Table I). In upstate New York cities the proportion of convictions for lesser offenses was 30%. In Multonal County, Oregon (in which is located the city of Portland), 35% of the defendants were convicted of lesser offenses. In three California counties, Alameda, Los Angeles, and San Francisco the percentage of convictions for lesser offenses were 30.3%, 19.5%, and 21.9% respectively."[45] This practice which results in the original crime going unpunished will be discussed at some length in a latter portion of the paper.

Besides the Federal Government's statistics there are available the results of crime surveys made by some of the more progressive states. From three of these I have taken statistics which show rather conclusively that crimes are going unpunished throughout the nation.

From the Illinois Crime Survey[46] we can learn what happened to 16,812 felony cases which entered the courts of twenty counties of Illinois, of the City of Chicago (tabulated apart from Cook County), and of 1,838 felony cases entering the courts of the neighboring city of Milwaukee, Wisconsin, during 1926.

In this survey the Illinois Association for Criminal Justice selected counties representative of the several sections of the State as well as the various types of communities, in-

45. "Judicial Criminal Statistics - 1934," op. cit., p. 11-12
46. "Illinois Crime Survey," Illinois Association for Criminal Justice, Chicago, Ill., 1929

dustrial, mining, agricultural, and metropolitan. In size they range from Chicago, with 2,701,705 inhabitants, to Stark County, with 9693. They range in the number of cases of felonies reported in this study from 12,543 in Chicago to 15 in Stark County. Milwaukee was included in the study because of its proximity to Chicago and because of the fact that it is frequently referred to as a city in which the courts are very "efficient."

Table XXII is a summary of the principal classifications of any General Disposition Table but because such a table would be too bulky for discussion it has been subdivided and condensed into several tables.

TABLE XXII – SUMMARIZED DISPOSITION TABLE[47]

	Total Illinois		Chicago		Chicago and Cook County		Eight More Urban Counties		Seven Less Urban Counties		Two Strictly Rural Counties		Williamson and Franklin		Milwaukee	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Total Number of Cases	16,812	100.00	12,543	100.00	13,117	100.00	2,293	100.00	904	100.00	33	100.00	465	100.00	1,838	100.00
Eliminated in Preliminary Hearing	7,340	43.66	6,124	48.83	6,361	48.49	667	29.09	254	28.10	8	24.24	50	10.75	319	17.36
Entering Grand Jury	9,472	56.34	6,419	51.17	6,756	51.51	1,626	70.91	650	71.90	25	75.76	415	89.25	1,519	82.64
Eliminated in Grand Jury	2,034	12.10	1,437	11.45	1,503	11.46	359	15.66	113	12.50	5	15.15	54	11.61		
Entering Trial Court	7,438	44.24	4,982	39.72	5,253	40.05	1,267	55.25	537	59.40	20	60.61	361	77.63	1,519	82.64
Eliminated in Trial Court	3,977	23.66	2,533	20.19	2,671	20.36	718	31.31	294	32.52	8	24.24	286	61.51	350	19.04
Guilty	3,461	20.59	2,449	19.53	2,582	19.68	549	23.94	243	26.88	12	36.36	75	16.13	1,169	63.60
Probation	782	4.65	510	4.07	554	4.22	176	7.67	49	5.42	1	3.03	2	.43	(1) 501	(1) 27.26
New Trials or Appeals	70	.42	47	.37	51	.39	6	.26	8	.89			5	1.08	7	.38
Other Eliminations After Guilty	12	.07	7	.06	9	.07	2	.09	1	.11						
Sentence Executed, Unchanged	2,583	15.37	1,871	14.92	1,954	14.90	365	15.92	185	20.46	11	33.33	68	14.62	661	35.96
Sentence Executed, Modified	14	.08	14	.11	14	.10										
Total Sentences Executed	2,597	15.45	1,885	15.03	1,968	15.00	365	15.92	185	20.46	11	33.33	68	14.62	661	35.96

(1) Includes 21 cases "suspended sentences."

47. "Illinois Crime Survey," op. cit., p.35

Table XXII needs explaing in four parts - the eliminations in preliminary hearing, in the grand jury, in the trial court, and through probation.

Eliminations in preliminary hearing:- Here we have three distinct groupings: Chicago-Cook County with 48 to 49% eliminations; the eight more urban, the seven less urban, and the rural counties with 24 to 29% and Williamson - Franklin with 11%. This condition is in harmony with the result in Missouri in that it shows a greater unwillingness outside of the large cities to eliminate cases in this stage of procedure.[48] It is a most startling fact that nearly 50% of all cases and 57.47% of all eliminations should fall into this category in Chicago. It once again demonstrates the vast importance of the preliminary hearing in the conduct of felony cases in our large cities. Popular attention is almost always centered on the trial court, though nearly 60% of eliminations take place at the first stage. Contrast the "Total Illinois" percentage of 43.66 with that of Milwaukee - 17.36.

Grand Jury Eliminations: Among the individual groups there is a very great degree of uniformity. Chicago 11.45, more urban counties 15.66, less urban 12.50, rural 15.15 and Williamson-Franklin 11.51. It is evident then that the grand jury still functions as a sifting machine of approximately equal importance

48. "Missouri Crime Survey," Macmillan Co., New York, 1926, p. 275

throughout the various types of communities in Illinois. It has by no means lost its importance as in Missouri and ranks with the grand jury in New York City.[49] Milwaukee uses the information instead of the indictment as the form of accusation and hence shows no elimination at this point.

Trial Court Eliminations: It is obvious, of course, that the trial court can act only on such cases as survive to that stage. It should be noted, therefore, that Chicago and Cook County have already lost 60% of all cases and are starting with only 40%; the more and less urban and rural counties start out with approximately 55-60%; and Williamson - Franklin with 78%. Milwaukee, having no grand jury has lost none above the 17% lost, in preliminary hearing, naturally stands at the top. The eliminations in the trial courts of Chicago and Cook County are slightly over 20% which is not too high; for the two rural counties slightly higher, 24%; and for the more and the less urban counties at about 32%. Williamson - Franklin, on the other hand, eliminate 61.5% of all cases in this stage - over three-fifths. Milwaukee, although it has only lost 17% and has a large group entering the trial court, eliminates only 19%. Of this stage of procedure the important phase is found in the number of cases that are guilty. Included in this, of course, are all cases in which guilt is established, either by conviction or by a plea. Chicago

49. Report of the Crime Commission of New York State; Report of the Subcommission on Statistics, Legislative Document No. 94, 1927, p. 11

and Cook County have 20%; the more and the less urban counties, 24 and 27%; the rural 36%; and Williamson and Franklin only 16%. Milwaukee, on the other hand, has a very high percentage, about 64%.

Probation Eliminations: In Illinois the use of probation seems to assume only modest proportions, though the range is considerable: from 0.43% in Williamson - Franklin to 7.67% in the more urban counties. These low figures may be contrasted with Milwaukee's probation figure of 27.26%; over a quarter of all persons held for felonies, and roughly, two-fifths of all cases where guilt was established were put on probation. Chicago - Cook County, with 4.22%, occupies an intermediate position in the scale of Illinois groups.

Table XXIII sets forth what happens to cases in the preliminary hearing. The order in which the various dispositions are arranged follow roughly the order which these dipositions follow relative to the actual hearing. For example, the first four call for practically no action by the court. The others are connecting with the hearing in one way or another.

"Total Eliminated" represents the net activity of the lower court process. Nearly 60% of the Chicago - Cook County cases are eliminated, whereas, roughly, one-third are disposed of in the same way in other jurisdictions. This contrasts sharply with the 17% in the Milwaukee hearings.

TABLE XXIII - CASES DISPOSED OF IN PRELIMINARY HEARING[50]

	Total Illinois		Chicago		Chicago and Cook County		Eight More Urban Counties		Seven Less Urban Counties		Two Strictly Rural Counties		Williamson and Franklin		Milwaukee	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Total Number of Cases	16,812		12,543		13,117		2,293		904		33		465		1,838	
Original Indictments	2,889		1,714		1,866		447		260		7		309			
Total Entering Preliminary Hearing	13,923	100.00	10,829	100.00	11,251	100.00	1,846	100.00	664	100.00	26	100.00	156	100.00	1,838	100.00
1. Never Apprehended	465	3.34	391	3.61	394	3.50	1	.05	67	10.40	3	11.54			16	.87
2. Error, No Complaint	116	.83	116	1.07	116	1.03										
3. Complaint Denied	35	.25	35	.32	35	.31										
4. Bond Forfeited, Not Apprehended	73	.52	68	.63	68	.60	4	.22	1	.15					6	.33
5. Certified to Other Courts	116	.83	50	.46	72	.64	41	2.22	2	.31			1	.64	1	.05
6. Dismissed, Want of Prosecution	2,903	20.85	2,501	23.10	2,558	22.74	269	14.59	51	7.92	5	19.23	20	12.82	25	1.36
7. Nolle Prosequi	882	6.33	766	7.08	801	7.12	58	3.14	17	2.64			6	3.85	32	1.74
8. Discharged	2,609	18.74	2,117	19.55	2,235	19.87	271	14.68	90	13.98			13	8.33	235	12.79
9. Reduced to Misdemeanor Not Punished	23	.18	12	.11	12	.11	11	.59								
10. Reduced to Misdemeanor, Punished	17	.12	3	.03	5	.04	7	.38	5	.78						
11. No Order	25	.18	22	.20	22	.20	1	.05	2	.31						
12. Pending	8	.06	7	.06	7	.06	1	.05							4	.22
13. No Record	68	.49	36	.33	36	.32	3	.16	19	2.95			10	6.41		
Total Eliminated	7,340	52.72	6,124	56.55	6,361	56.54	667	36.13	254	39.44	8	30.77	50	32.05	319	17.36
Total Going On	6,583	47.28	4,705	43.45	4,890	43.46	1,179	63.87	390	60.56	18	69.23	106	67.95	1,519	82.64
Original Indictments	2,889		1,714		1,866		447		260		7		309			
Total Cases Entering Grand Jury	9,472		6,419		6,756		1,626		650		25		415		1,519	

50. "Illinois Crime Survey," op. cit., p. 38

Table XXIV gives us the total elimination by the grand jury which runs for the several jurisdictions, Williamson - Franklin excepted, at about 20%, with a total for the State of 21.47%. Save in the two rural counties the group of cases "no billed" is proportionately the largest of the elimination classes and in these two counties the total number of cases is only twenty-five. There is, however, a notable difference in the importance of this group as between Chicago and Cook County on the one hand, and the fifteen counties more and less urban. In Chicago - Cook County "no bills" constitute about 92% of all eliminations; in the eight more urban, 49%; in the seven less urban, 54%; and in the rural, 40%. Williamson - Franklin show none at all, for of the 415 cases entering the grand jury, 309 were original indictments; and it is not customary there to make a record of "no bills."

Another outstanding method of elimination is the one labeled "no record"; this is 35% in the seven less urban, 60% in the rural and 98% in Williamson - Franklin, of all eliminations. Another significant percentage is that for "never presented" in the eight more urban counties - 6.52%. These two classes, "never presented" and "no record," are indicative of some weakness or other in the handling of cases or in their recording. Milwaukee uses informations; hence no eliminations in grand jury and no original indictments are found.

Small in proportion to the others is another interesting variant - the group "indicted for misdemeanor," which has been

arbitrarily included in eliminations, "Pending" cases are quite negligible.

Table XXIV – Cases Disposed of in Grand Jury[51]

	Total Illinois		Chicago		Chicago and Cook County		Eight More Urban Counties		Seven Less Urban Counties		Two Strictly Rural Counties		Williamson and Franklin		Milwaukee	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Total Entering Grand Jury	9,472	100.00	6,419	100.00	6,758	100.00	1,626	100.00	650	100.00	25	100.00	415	100.00		
1. Never Presented	109	1.15					106	6.52	2	.31			1	.24		
2. No Billed	1,628	17.19	1,344	20.93	1,388	20.54	177	10.89	61	9.38	2	8.00				
3. Indicted for Misdemeanor	79	.83	37	.57	39	.58	29	1.78	11	1.69						
4. Pending	5	.05	1	.02	1	.02	4	.25								
5. No Record	213	2.23	55	.86	75	1.11	43	2.64	39	6.00	3	12.00	53	12.77		
Total Eliminated	2,034	21.47	1,437	22.38	1,503	22.25	359	22.08	113	17.38	5	20.00	54	13.01		
Total Cases Entering Trial Court	7,438	78.53	4,982	77.62	5,253	77.75	1,267	77.92	537	82.62	20	80.00	361	86.99	1,519	100.00

51. "Illinois Crime Survey," op. cit., p. 41

In the earlier stages of procedure we have, in general, several types of "elimination" and only one type of "going on". Here in the trial court eliminations are of many kinds, but in addition cases not eliminated may display a variety of modes of treatment, as is indicated in that part of Table XXV, which is under the general heading "Found Guilty."

TABLE XXV — CASES DISPOSED OF IN TRIAL COURT [52]

	Total Illinois		Chicago		Chicago and Cook County		Eight More Urban Counties		Seven Less Urban Counties		Two Strictly Rural Counties		Williamson and Franklin		Milwaukee	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Total Entering Trial Court	7,438	100.00	4,982	100.00	5,253	100.00	1,267	100.00	537	100.00	20	100.00	361	100.00	1,519	100.00
1. Never Apprehended	87	1.17	41	.82	45	.86	31	2.45	5	.93			6	1.66	12	.79
2. Bond Forfeited, Not Apprehended	92	1.24	72	1.45	79	1.50	8	.63	3	.56			2	.55	6	.40
3. Certified to Other Courts	18	.24	13	.26	15	.29	1	.08	2	.37						
4. Defendant Dead	19	.26	9	.18	12	.23	3	.24					4	1.11	2	.13
5. Nolle Prosequi	478	6.42	282	5.66	293	5.58	103	8.13	45	8.38			37	10.25	48	3.16
6. Nolle, Account Other Indictments	115	1.55	8	.16	8	.15	69	5.45	13	2.42			25	6.93	36	2.37
7. Stricken with Leave to Reinstate	511	6.87	374	7.51	392	7.46	63	4.97	35	6.52			21	5.82		
8. Stricken Account Other Indictments	871	11.70	690	13.85	729	13.88	105	8.29	24	4.47			13	3.60		
9. Dismissed, Want of Prosecution	218	2.92	206	4.12	216	4.11							2	.55	2	.13
10. Discharged by Court	43	.58	28	.56	28	.53	3	.24	11	2.05			1	.28	170	11.19
11. Off Call	43	.58	41	.82	43	.82										
12. Felony Waived, Tried by Court, Acquitted	293	3.94	271	5.45	293	5.58										
13. Felony Waived, Plead Guilty, Acquitted	4	.05	4	.08	4	.08										
14. Acquitted by Jury	372	5.00	270	5.42	283	5.39	46	3.62	29	5.40			14	3.88	37	2.43
15. Mistrial	20	.27	6	.12	6	.11	2	.16	7	1.30			5	1.38	1	.07
16. Pending	793	10.67	218	4.38	225	4.28	284	22.41	120	22.35	8	40.00	156	43.21	1	.07
17. No Record																
18. Tried by Court, Acquitted *															35	2.30
Total Eliminated	3,977	53.46	2,533	50.84	2,671	50.85	718	56.67	294	54.75	8	40.00	286	79.22	350	23.04
Found Guilty																
19. Felony Waived, Convicted	281	3.78	266	5.33	281	5.35									4	.26
20. Tried by Court, Convicted Off. Charged *															381	25.08
21. Felony Waived, Plead Guilty, Convicted	883	11.89	836	16.80	883	16.81										
22. Adjudged Insane	12	.16	5	.10	6	.11	4	.32	2	.37					18	1.19
23. Plea Accepted, Guilty Offense Charged	949	12.75	419	8.41	453	8.62	315	24.86	136	25.32	9	45.00	36	9.98	689	45.35
24. Plea Accepted, Guilty Lesser Offense	980	13.17	723	14.51	750	14.28	157	12.39	62	11.55	1	5.00	10	2.77	16	1.05
25. Convicted Offense Charged by Jury	299	4.02	175	3.51	184	3.50	65	5.13	31	5.77	2	10.00	17	4.71	47	3.09
26. Convicted Lesser Offense by Jury	57	.77	25	.50	25	.48	8	.63	12	2.23			12	3.32	2	.13
27. Tried by Court, Convicted Lesser Office *															12	.79
Total Found Guilty	3,461	46.54	2,449	49.16	2,582	49.15	549	43.33	243	45.24	12	60.00	75	20.78	1,169	76.94

* Milwaukee only

52. "Illinois Crime Survey," op. cit., p. 43

Taking up the eliminations in the order of their appearance in the stub of Table XXV, we notice first the "never apprehended" and "bond forfeited, not apprehended." For the state as a whole these two constitute 2.41% of all cases entering the trial court and varying percentages for the several jurisdictions. "Certified to other courts" and "defendant dead" are both numerically unimportant, amounting to only one-half of one percent.

The four items which follow are a much more important group of dispositions. Certain facts can be brought out more clearly by a brief summarization of these items into two groups. Those in which other indictments were not used to explain the "nolle" or the "stricken" and those in which it was presented as the reason. The most interesting facts about these four classes are, first, that they constitute roughly one-fourth of all cases entering the trial court; and second, their aggregate is uniform, outside of the seven less urban counties and the rural counties. The two rural counties show that they do not use the "nolle" or the "stricken," and the seven less urban counties a somewhat lesser use than the rest of the state. Since these forms of disposition represent largely the autocratic power of the prosecutor over the case, they must be considered as shedding light on the degree to which this power is used. The unallayed exercise of this power is more clearly shown in #5 and #7, and the use of the power as a result of other conditions in the form of other indictments is shown in #6 and #8.[53]

53. See Table XXV, supra.

Almost exactly one-half of the eliminations in the trial courts of Illinois are of this general class. Chicago and Cook County are at the top, with 53% disposed of by this method. Then, by equal steps, we come down to 46% for the eight more urban, to 40% for the seven less urban, to 34% for Williamson-Franklin, and finally to 0% for the two rural counties. Milwaukee shows less than one-fourth of the trial court eliminations in this general class, which does not there include the disposition "stricken with leave to reinstate."

The classification of offenses followed was a modification of that recommended by the United States Census and is as follows: (1) Homicide; (2) Rape; (3) Robbery; (4) Assault; (5) Burglary; (6) Forgery; (7) Embezzlement and Fraud; (8) Larceny; (9) Carrying concealed weapons; (10) Sex crimes; (11) Liquor; (12) Miscellaneous.

Mere establishment of guilt or even sentencing by the judge does not make for punishment, for there still is a chance for the criminal to escape the punishment. Table XXVI shows the various methods by which the criminal may dodge punishment after sentence had been decreed. Most important proportionately of these is "probation," for it constitutes from 2.67% of all guilty cases in Williamson - Franklin to 32.06% in the eight more urban counties, with a top point in Milwaukee of 42.86%. Chicago - Cook County and the seven less urban counties have an intermediate position, with 21.46% and 20.16% respectively. The classification of probation as a dodging of punishment needs explanation.

When properly administered probation is not a form of punishment dodging, but at present it is not universally administered to any degree of satisfaction. Instead of each case being treated individually, followed up, and the best social case work methods used, in many cases it is administered in a purely perfunctory manner. With this type of administration, with politically appointed officers who regard their position as a job and nothing else, probation resolves itself into a dodging of punishment. It may be said with fairness, that probation is as yet not fully acclimated in the air of the rural sections, if the figures just cited are of any significance as for the other modifications, they indicate merely the great flexibility of our system, in which justice apparently can be done at almost any time after the matter of guilt has once been settled.

TABLE XXVI - PROBATIONS, MODIFICATIONS, NEW TRIALS, AND APPEALS[54]

	Total Illinois		Chicago		Chicago and Cook County		Eight More Urban Counties		Seven Less Urban Counties		Two Strictly Rural Counties		Williamson and Franklin		Milwaukee	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Total Found Guilty	3,461	100.00	2,449	100.00	2,582	100.00	549	100.00	243	100.00	12	100.00	75	100.00	1,169	100.00
1. Probation	782	22.59	510	20.82	554	21.46	176	32.06	49	20.16	1	8.33	2	2.67	(1) 501	(1) 42.86
2. Term Reduced	8	.23	8	.33	8	.31										
3. Sentence Vacated, Defendant Released	12	.35	7	.29	9	.35	2	.36	1	.41						
4. Sentence Vacated, Tried for Lesser Offense, Convicted	1	.03	1	.04	1	.04										
5. Sentence Vacated, Plead Guilty Lesser Offense	5	.14	5	.20	5	.20										
6. New Trial Granted	44	1.27	29	1.19	33	1.28	3	.55	7	2.88			1	1.33	6	.51
7. Appealed	26	.75	18	.73	18	.70	3	.55	1	.41			4	5.33	1	.09
Total Sentences Executed, Unchanged	2,583	74.64	1,871	76.40	1,954	75.68	365	66.48	185	76.13	11	91.67	68	90.67	661	56.54
Total Sentences Executed, Modified	14	.41	14	.57	14	.54										
Total Sentences Executed	2,597	75.05	1,885	76.97	1,968	76.22	365	66.48	185	76.13	11	91.67	68	90.67	661	56.54

(1) Includes 21 cases of "suspended sentences."

54. "Illinois Crime Survey," op. cit., p. 53

Like Illinois Missouri has also conducted a crime survey in which some 8,000 felony cases were studied. Table XXVII gives a broad view of the whole judicial process of elimination in Missouri; and Table XXVII - A is the same table but in bar-graph form. The number of warrants issued, as shown in Table XXVII, does not equal the number of cases taken to preliminary hearing because 1113 cases[55] are taken directly to the circuit court, and do not enter the preliminary hearing. The numbers given here represent then the cases surviving into the several stages of procedure. Under B, C, D, E, are the headings of the various sub-types of elimination, and in each case the heading "Total" includes all eliminations in that particular stage. The main points of each table are then the numbers or percentages entering each stage, and the totals of elimination in each stage.

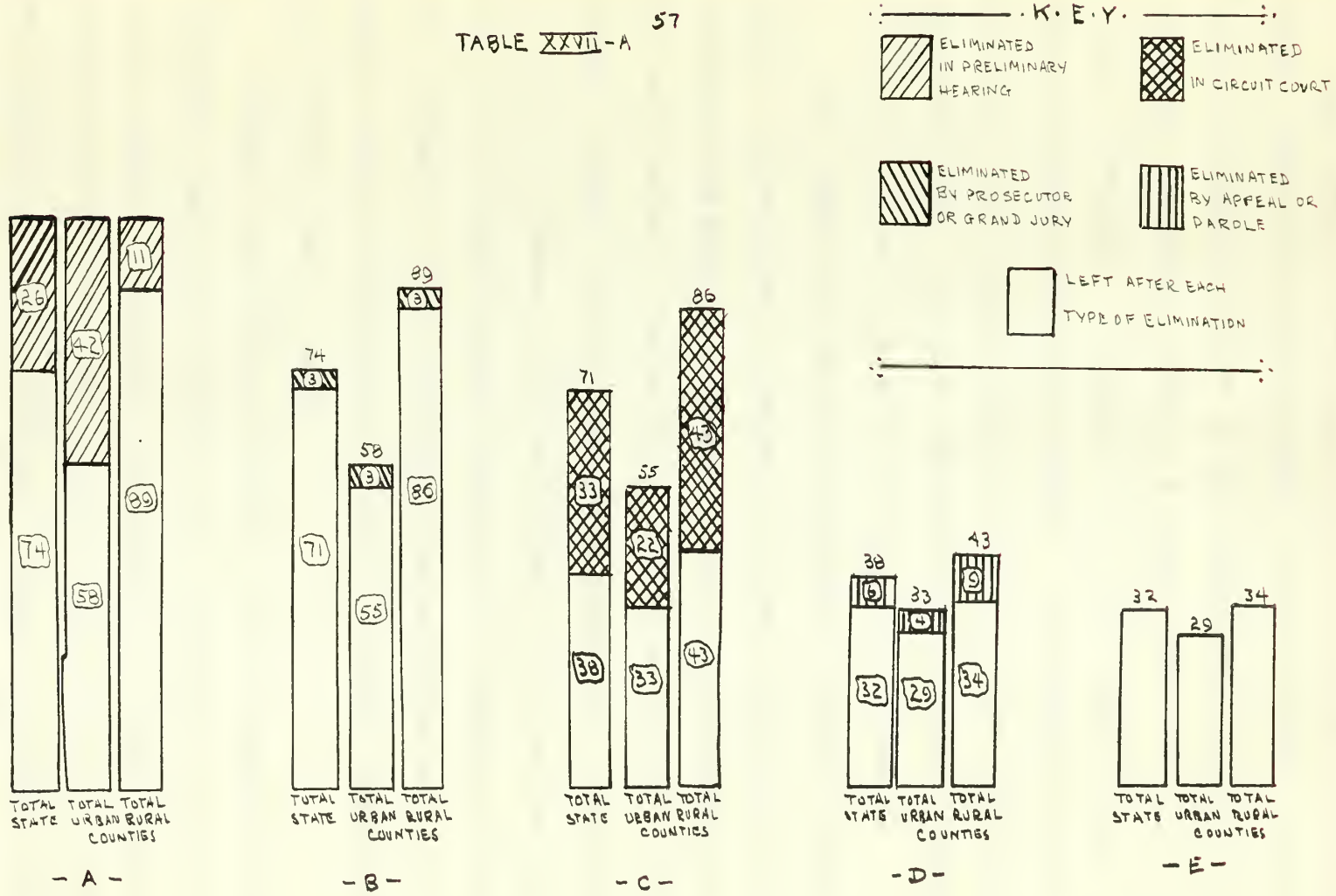
55. "Missouri Crime Survey", op. cit., p. 281, Table II, second item, first column.

TABLE XXVII - CASES ELIMINATED IN THE SEVERAL STAGES OF PROCEDURE[56]

	Total State		St. Louis City		Jackson County		Buchanan County		Total Three Urban Counties		Total Thirty-Six Counties	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
A. Warrants Issued	7,032	100.00	1,492	100.00	1,697	100.00	300	100.00	3,489	100.00	3,543	100.00
B. Preliminary Hearing												
1. Discharged	574	8.16	119	7.98	257	15.14	54	18.00	430	12.32	144	4.06
2. Disposed of as Misdemeanor	195	2.77	110	7.37	23	1.36	30	10.00	163	4.67	32	.90
3. Disposed of for want of prosecution	689	9.80	22	1.47	515	30.35	65	21.67	602	17.25	87	2.46
4. Nolle Prosequi	182	2.59	85	5.70	8	.47	18	5.99	111	3.18	71	2.00
5. Other Disposition	194	2.76	81	5.42	55	3.24	14	4.67	150	4.30	44	1.24
6. Total	1,834	26.08	417	27.95	858	50.56	181	60.33	1,456	41.73	378	10.67
C. To Grand Jury + Circ. or Pros. Attorney	5,198	73.92	1,075	72.05	839	49.44	119	39.67	2,033	58.57	3,165	89.33
1. No True Bill	9	.13	6	.40					6	.17	3	.08
2. No Information Issued	220	3.13	69	4.62	35	2.06			104	2.98	116	3.27
3. Total	229	3.26	75	5.03	35	2.06			110	3.15	119	3.36
D. To Circuit Court	4,969	70.66	1,000	67.02	804	47.38	119	39.67	1,923	55.12	3,046	85.97
1. Nolle Prosequi	1,106	15.73	102	6.84	271	15.97	32	10.67	405	11.61	701	19.79
2. Disposed of on court action	251	3.57	37	2.48	9	.53	17	5.67	63	1.81	188	5.31
3. Tried and Acquitted	323	4.59	83	5.56	49	2.89	4	1.33	136	3.90	187	5.28
4. Other Dispositions	609	8.66	82	5.50	77	4.54	2	.67	161	4.61	448	12.64
5. Total	2,289	32.55	304	20.38	406	23.92	55	18.33	765	21.93	1,524	43.01
E. Sentence Imposed	2,680	38.11	696	46.65	398	23.45	64	21.33	1,158	33.19	1,522	42.96
1. Paroled	344	4.89	34	2.28	35	2.06	8	2.67	77	2.21	267	7.54
2. Appealed	93	1.32	27	1.81	10	.59	4	1.33	41	1.18	52	1.47
3. Other Dispositions	11	.16	5	.34	6	.35			11	.32		
4. Total	448	6.37	66	4.42	51	3.01	12	4.00	129	3.70	319	9.00
F. Sentence Executed	2,232	31.74	630	42.23	347	20.45	52	17.33	1,029	29.49	1,203	33.95

56. "Missouri Crime Survey," op.cit., pp. 274-276

TABLE XXVII-A [57]



PERCENTAGE ELIMINATED, IN EACH MAJOR PHASE OF PROCEDURE, IN NON-LIQUOR CASES, IN TOTAL STATE, TOTAL URBAN COUNTIES AND TOTAL RURAL COUNTIES, "E" REPRESENTS PERCENTAGE UNPUNISHED.

57. "Missouri Crime Survey," op. cit., p. 277

The reader's attention should be called to the fact that these tables lack completeness in one respect. In order to give a finished picture of the relation of judicial procedure to crime, we should have as a grand total the entire number of crimes committed. The next item, then, would be the entire number of arrests for these crimes. As a matter of fact, only in St. Louis and Jackson County do we have data for arrests in an adequate form. We must, therefore, start with "warrants issued" as a base in order to secure a sound basis.

The summary of the basic mortality table is found in Table XXVII, This gives in compact form the proportion of all cases entering the machine of justice that is eliminated by each of the main parts of the machine. These parts are (1) the preliminary hearing; (2) the grand jury and office of the prosecuting or circuit attorney; (3) the circuit court in its trial function, and (4) the circuit court in its function of modifying the sentence, or of postponing its execution as a result of possible action of the Supreme Court. We shall consider each part in a general way in order.

Taking the state as a whole, the preliminary hearing in Missouri eliminates slightly over one-fourth of all cases (26.08%); in the cities it accounts for slightly over two-fifths (41.73%); in the country districts slightly over one-tenth (10.67%). When we compare the cities with one another, we note a wide divergence between St. Louis on the one hand, and Jackson County and Buchanan County on the other. In the rural counties those which

have a larger percentage of urban population show a distinctly higher proportion eliminated in this stage, and in the counties less than 30% urban the use of the preliminary hearing decreases as the "urbanness" decreases.

In Missouri, in contrast to Illinois, the grand jury plays a negligible part in elimination. Only nine cases, and six of them were in St. Louis, disappear because of the refusal of the grand jury to return a true bill. The prosecuting or circuit attorney, by refusing to issue informations, however, does eliminate 3.13% of all cases, taking the state as a whole. Nor is there a significant difference between city and country in this respect, 2.98% as against 3.27%. A reference to Table I B[58] will show, however, that there is a considerable range from figures for the several cities and groups of counties from zero percent in Buchanan County, (which includes St. Joseph) to 8.65% in the eight counties from 10.0% to 19.9% urban.

In the entire state the circuit court, acting as a trial court, as distinct from its function of sentencing and modifying sentences, accounts for the elimination of almost one-third of the cases (32.55%). The numerical importance of the circuit court is almost exactly one-half in the city of what it is in the country, 21.93% as aginst 43.01%. We should note, however, that only 55.12% of all cases come to the city circuit courts

58. "Missouri Crime Survey", op. cit., Table I B, p. 276

as against 85.97% in the country courts. The consistency of the cities in respect to the percentage eliminated in the circuit court is notable; and for all except the least urban counties the range is only from 38.01% to 47.94%. The least urban show 58.82% - nearly three-fifths, eliminated in that part of the process which usually looms largest in the minds of the public. Here we find a distinct difference between the city and the country.

Slightly over 6% of all cases are kept from the execution of sentence by reason of "judicial paroles" - that is, suspension of sentence and probation - or because of appeals, either pending or resulting in reversals by the Supreme Court. At this point the country courts eliminate much more than country courts in the ratio of 9.00 to 3.70. Here also the country counties are fairly consistent among themselves and the cities among themselves.

A most significant question is: What is the ratio of sentences executed to the warrants issued? For the whole state the figure is 31.74%. In this respect there is little difference between cities and country: 29.49% for the former and 33.95% for the latter. In St. Louis the judicial process results in more than twice the percentage of punishments found in either Jackson County or Buchanan County figures. With the one exception of the 20.29% groups of counties[59] St. Louis exceeds all

59. "Missouri Crime Survey," op. cit., p. 276

the subdivisions of the state in this respect.

The Harvard Law School in 1936 published the results of studies on crime conditions in Boston. From Volume II, "Judges and Law Reform" I have taken two tables which show rather interesting facts about the situation in Boston as compared to other cities and states[60] and the conditions in Massachusetts' two major counties, Suffolk and Middlesex as compared to each other and the balance of the state.[61]

Table XXVIII is a comparison between Boston and six other major cities in the country and between Massachusetts and ten other states of the perdentage of defendants tried who have been convicted classified according to four major types of offenses and as to all offenses.

The table shows that next to Chicago and St. Louis, Boston is lowest in the percentage of convictions obtained and the difference between the three cities is only 1.5% In other words over 50% of the defendants tried escaped without punishment. For the entire seven cities the average is 52.1% convicted - only a little more than half. In the comparison between Massachusetts and ten other states is worse if anything for Massachusetts as a state is the lowest of eleven states studied, convicting only 50.1% of the defendant tried. The average for the eleven states is 69.5% with over 30% of the defendants escaping punishment.

60. See Table XXVIII, infra.
61. See Table XXIX, infra.

Table XXVIII - Percentage Convicted of Defendants Tried[62]

	All Offenses	Murder and Man-Slaughter	Robbery	Breaking and Entering	Larceny
Boston, 1931-34	44.0	36.1	54.1	60.0	48.0
Cleveland, 1931	66.4	66.1	77.6	73.4	65.2
Chicago, 1926	42.5				
Los Angeles, 1929-30	63.6				
Milwaukee, 1926	57.0	Figures for individual offenses			
St. Louis, 1924	42.8	not reported			
San Francisco, 1929-1930	48.5				
Connecticut, 1932	72.2	57.1	58.3	85.7	84.6
Maryland, 1932	66.5	67.0	68.3	64.8	66.1
Massachusetts, 1931-1934	50.1	58.5	57.2	63.1	53.6
Michigan, 1932-1933	71.2	63.4	76.9	76.0	73.4
New Hampshire, 1932-1933	86.5	Too few case to calculate			
New Jersey, 1932-33	60.4	44.6	55.2	63.5	59.3
No. Carolina, 1932	71.2	67.0	72.4	81.3	72.8
Ohio, 1932-1933	67.6	69.1	72.0	75.8	70.6
Pennsylvania, 1933	50.6	48.9	62.4	66.6	53.0
Vermont, 1932	78.1	Too few cases to calculate			
Wisconsin, 1932	90.1	85.3	92.7	88.8	90.3

Table XXIX shows the percentages of defendants prosecuted and of defendants tried by a jury who were convicted in the Massachusetts Superior Courts classified by county and offense.

62. "Judge and Law Reform," Sam B. Warner and Henry B. Cabot, Harvard University Press, Cambridge, Mass., 1936, p. 69

TABLE XXIV

PERCENTAGES OF DEFENDANTS PROSECUTED AND OF DEFENDANTS TRIED BY A JURY, WHO WERE CONVICTED IN THE SUPERIOR COURT, BY AVERAGES, FOR THE YEARS, 1931-1934[63]

PERCENT CONVICTED OFFENSE	SUFFOLK COUNTY PERCENT CONVICTED OF:		MIDDLESEX COUNTY PERCENT CONVICTED OF:		ALL OTHER COUNTIES PERCENT CONVICTED OF:	
	PROSECUTED	TRIED	PROSECUTED	TRIED	PROSECUTED	TRIED
INDICTMENTS:						
TOTAL	45.6	44.0	59.4	48.1	71.9	60.5
MURDER AND MANSLAUGHTER	30.4	36.1	46.8	80.0	42.6	71.7
ROBBERY	58.7	54.1	65.0	61.8	70.8	63.6
BREAKING AND ENTERING	66.1	60.0	75.7	64.5	84.2	72.7
LARCENY	58.0	48.0	53.2	59.2	69.8	67.2
NON SUPPORT	44.0	64.1	44.1	80.0	49.3	80.0

63. "JUDGES AND LAW REFORM," op. cit., p. 72

From a study of Table XXIX, we can see that Suffolk County ranks lowest in convictions obtained throughout the state in every type of offense.

Up to this point I have discussed the extent of unpunished crimes basing much of my argument on the fact that there is a wide variance between indictments and convictions. It is impossible to any more than guess, and that without any degree of reliability, what percentage of those indicted and not convicted are guilty of criminal conduct. Estimates of guilty among this group vary greatly from 25% to 75%. These estimates and the statistics quoted here mean only one thing - a vast number of crimes are going unpunished. It is impossible to state exactly just how many criminals escape punishment - figures are not available, but we do know, and statistics support our contention, that all crimes are not being punished. Neither can we get statistics which will accurately show the relation which exists between crimes committed and warrants issued or arrests made. To begin with, complaints are not made for all offenses and this makes it difficult to ascertain how many crimes are committed, neither are warrants issued for all crimes which are committed so that it is difficult to make the comparison. Wherein does the fault lie? Is it in the courts, the prosecuting attorney's office, or in the police department? Each of these three agencies of administering criminal justice will next be considered in this paper.

Analysis of Factors Causing Crime to go Unpunished

First in importance, by virtue of the part it plays in apprehending criminals, is the police department. It stands to reason that unless the police department does its job, and does it well, the prosecuting attorney and the criminal court might just as well close up for lack of work.

"The term ' police' is elastic. It applies alike to the one man, part time police force of a rural community and to the complex police organization of a great city. It includes state game and fire wardens, federal agents of the Department of Justice, the Secret Service of the Treasury Department, the Customs Border Patrol, and the Immigration Border Patrol, and so-called private police such as the railroad police or the unique Coal and Iron police of Pennsylvania. The town marshall, the town or township constable, and the county sheriff are all policemen."[64]

Inasmuch as crime itself occurs only rarely in the rural sections of the country, we shall, when we use the term "police", be referring to cit, state, and federal police forces to the exclusion of all other types.

I often wonder how many of our citizens have ever stopped to consider the calibre of men upon whom they are dependent for protection against criminals. Dr. Sheldon Glueck in his book

64. Morris, op. cit., p. 227

"Crime and Justice,"[65] among other things, discusses this matter of policemen. With the exception of the men in the Federal Service, the men appointed to the average police force are not capable enough to hold a better job, and so, attracted by the lure of a steady outdoor job, summer vacation with pay, and retirement with pension, have taken the civil service examination and, with political influence, have had themselves appointed to the force. Ideally, each policeman should be a combination of the best points of the soldier, lawyer, parent, and diplomat; and for all these services he gets an unskilled worker's wage. In Boston, the wage scale was between $2,000 and $2,100;[66] in New York State the maximum wages range "from $1380 in Harwich to $2500 in New York City. The country over a patrolman's pay probably averaged $150 a month for full-time work during our most prosperous years."[67]

The result of conditions like these is that our police forces are not made up of lawyers and diplomats. The majority of recruits are everyday workingmen - former store clerks, mechanics, factory hands, truck drivers, and the like. "Some of them are apt students of police methods and become skillful in doing regular work. Most of them have no conception of the crime problem as a whole nor even of police work beyond their immediate jobs. Twenty-five per cent of the police force of Kansas City,

65. "Crime and Justice," Sheldon Glueck, Little, Brown, and Co., Boston, 1936.
66. Thirty-First Annual Report of the Police Commission for the City of Boston, Public Document No. 49, 1936, p. 82-83
67. Morris, op. cit., p. 236

Missouri, twenty-one per cent of the police of Cleveland, and fourteen per cent of the police of Los Angeles were found in recent surveys to be in the low average, inferior, or very inferior grades as represented by a score of 45 or less in the Army Alpha Test. Mr. Amsden, Civil Service Examiner at Los Angeles, says that he has learned from experience that it is useless to appoint as patrolmen any candidate who cannot score 120 in any one of the Alpha tests. If this is a reasonable minimum, and the scores actually made by policemen in several large cities are representative of the ratings of policemen in general, more than 75% of the policemen of the United States are not intellectually able to perform their work."[68] And again Glueck says, in his "Crime and Justice" that the mental examinations given to the candidates often do not test either innate or permanently acquired intelligence. There is too great an opportunity for cramming for the examinations; and on an average only 35% of the police in the nation ever got to high school.[69]

However, in spite of poor material to start with some of the largest cities have managed to weld their police forces into fairly effective units by the process of requiring that all recruits attend a police training school. "New York City gives each new man 148 hours of intensive training, correlated with field work during an eight weeks' course in everyday police work, such

68. Morris, op. cit.,p236-237
69. Glueck, op. cit.

as methods of dealing with parades, accidents, fire, arrests, use of firearms, and knowledge of the criminal law, Berkeley, California, has a three-year course which meets one hour a day and includes a wide range of basic subjects not taught in other American police schools and including criminology, anthropology, toxicology, psychiatry, and micro-analysis, in addition to the conventional courses. Louisville, Kentucky, has an interesting police school not limited to recruits but also a seminar course for officers. Cincinnati has an effective course which particularly emphasizes legal training, drill, and target practice. St. Louis and Milwaukee are now giving much attention to the improvement of their training programs. These are the outstanding police schools of the country.

"These schools, however, are the exception and not the rule. Most cities have no training course worthy of the name. As late as 1927 Schenectady, with a population of 92,786, gave its recruits a ten days' course. Utica, a city of 101,604, required every member of its department to take six or eight hours of instruction in criminal law each year."[70]

The Wickersham Commission investigators in the course of their nation-wide inquiry asked 745 communities with populations of more than 10,000 what training they gave their police. Only 383 took the pains to answer and of these only 78 reported that they gave any kind of training at all, and, probably, not more

70. Morris, op. cit., p. 237

than 15 had reasonably adequate courses.[71] Police training all too often tends to follow the methods used by the commissioner of public safety of a large New York City who told the investigators of the New York Crime Commission:

"I say to him (the recruit) that now he is a policeman, and I hope that he will be a credit to the force. I tell him that he doesn't need anybody to tell him how to enforce the law; that all he needs to do is to go out on the street and keep his eyes open. I say: 'You know the Ten Commandments, don't you? Well, if you know the Ten Commandments and you go out on your beat and you see somebody violating one of those Commandments you can be sure he is violating some law."[72]

This is the sum total of the training given to new officers on the force. This is not one isolated spot which has been selected rather it is the general rule. If more of commissioners were as frank as the one quoted above some of our citizens who are so smug in their belief that all is well with our police system would be shocked beyond words.

After the recruit has become a full-fledged policeman he finds that his force is poorly equipped as regards crime detection. Unless he is a member of the force of a large city he finds that there is no means of effective communication other than by patrol boxes in the city; and interstate communication

71. National Commission on Law Observance and Enforcement, "Report on Police," p. 71
72. "Report of the New York State Crime Commission, 1927," op. cit., p. 213. Quoted from Morris, op. cit., p. 238

by means of the teletypewriter, while it is being extended, has not yet reached its maximum point of development. In 1931 the Wickersham Commission was forced to report that with two exceptions in cities over 300,000 population the police forces have inadequate communication systems.[73]

Neither is there one uniform system of crime detection itself. Only twenty-four states in 1934 had fingerprint bureaus. Since 1924 there has been established a National Division of Identification and Information within the Department of Justice at Washington. The division exchanges and furnishes identification for all law enforcement agencies and it is an important factor in developing nationwide cooperation in its field. Although some states require that the various police departments within its border cooperate with the division, it is still voluntary with money police forces and the result is that many forces do not cooperate.

Recently improvements in methods of police investigation have appeared. These have been fostered by the Department of Justice and more especially the Federal Bureau of Investigation and an association of police chiefs of the United States. Included in these improvements are: Schemes for classifying handwriting, the use of the Dewey decimal system for recording stolen and recovered property, the development of effective laundry mark

73. National Commission on Law Observance and Enforcement, op. cit., p. 5, and Morris, op. cit., p. 242

files, better laboratory equipment including microphotographic equipment and special types of microscopes, the use of the so-called "lie detector," better record keeping, including the use of a uniform crime report schedule, a uniform police chiefs' annual report, and a system for following through and redording the disposition of all complaints.

However, in spite of all these improvements being made in our methods of police investigation our American police are seriously handicapped in performing their duties, in comparison with their European brethren, by lack of authority. Continental policemen are representatives of the Sovereign and as such have powers and privileges not shared by private citizens. To begin with, their activities are national in scope. Should they so desire they may detain persons even though they are not suspected criminals. Accused persons may be legally subjected to extensive questioning. They have discretionary powers of seizure and search. German and Austrian police require the registration of all inhabitants and notification of change of address. In other Continental countries all foreigners are registered; and above all this, the European police are immune to prosecution by private citizens.

Here in the United States our police lack these privileges. Rather than grant them these powers, we prefer to handicap them raising the cry that by so doing we are safeguarding our personal liberty. This tradition has been carried so far that the police have only slightly more power than the average citizen. These

limitations place the police in a difficult position, for they cannot control criminals and still keep within the law themselves. For if they should only exercise their legal force, the criminals would escape and the police would face a charge of inefficiency. In view of this fact, the police constantly exceed their rights and arrest persons on charges of suspicion, making wholesale roundups, and forcing the suspects to talk. In this way about one-half of the arrests are illegal, but inasmuch as those taken into custody are criminals or lack political influence and their release makes up for any inconvenience caused by their detention. Handicapped by deficiencies in organization, training, and authority, a country of more than 3,000,000 square miles through which criminals may roam without having to cross a custom barrier, and numerous uncoordinated police organizations which are limited in their reach by budgets, laws, and policy, the police of the United States face a task far more difficult than that of their European brethren.

As if these difficulties were not enough for our police forces we find that among all forces, with few exceptions, there is a low morale - a lack of esprit de corps. This lack of spirit can be traced to one cause - political interference. Starting at the bottom of the list we find that men can join the force either by direct appointment or through passing civil service examinations. Appointed police forces have long been the treasure chest of politics, serving as the most ample source of rewards for political aid available. The civil service has partly avoided

this trouble but it has yet succeeded in finding the sort of man a police force needs, for the examination can do little more than test a certain minimum amount of general knowledge, but not one which will test for all the necessary qualities that go to make up a policeman.

"The chief-of-police serves as the technical adviser of the commissioner and has direct supervision of the routine work of the police force. In the United States there is no fixed standard of training or ability to which police chiefs must conform. They may vary in ability all the way from the competent and progressive August Vollmer to the ignorant and untrained chief-of-police of a small New England city who could not even fill out routine office papers without assistance. In Ohio, New Jersey, and Massachusetts, and in a few individual cities elsewhere, attempts have been made to improve police leadership by putting the office of chief under civil service control. This prevents the frequent removals from office that are associated with political turnovers and gives a man a chance to build up definite standards of police work. It is significant that Milwaukee with perhaps the cleanest record with respect to crime in the country has had only two police chiefs in 46 years, and has permitted them unparalleled freedom from political control."74

The large cities, with the lone exception of Chicago which appoints its police head from the ranks, prefer civilians without

74. Morris, op. cit., p. 235

police experience as commissioners. The idea behind this preference is that the commissioner's work is purely administrative and does not require a knowledge of police work. Instead the commissioner must be a man of wide adminstrative experience with the ability to plan his policy wisely and far-sightedly with a view to bringing the police and the public into close harmony.

"Theoretically, the aim, then, is not so much to gain a civilian police head as it is to extend the range of choice so that the most capable men may be chosen regardless of their connections. Unfortunately, the selection of civilian executives, also, has been hampered by factors of residence and political affiliations quite out of harmony with that idea. Cleveland's recent directors of public safety have included a minister, a roofing salesman, two lawyers, and a jeweler. Salt Lake City has appointed a plumber, an insurance agent, a tea and coffee salesman, a livery keeper, a stage-coach operator, and a fire insurance adjuster. New York, Philadelphia, Detroit, Los Angeles, and other large cities can boast of equally democratic and heterogeneous lists."[75]

In Europe, as if in sharp contrast, the police heads, although also chosen from outside of the ranks, are high officials trained as jurists, army officers, or executives in other bran-

75. Morris, op. cit., p. 234

ches of the governmental service somewhat related to police work. Political considerations play no part in the appointments. The only requirement for the position is fitness. When an official is found who can fill the requirements of the position he is left to carry on his plans and program without any interference from changing administrations. A new city government would regard him as a business firm regards a competent executive, and as such would keep him on.

Colonel Arthur Woods, the ablest commissioner New York has had, met with a much different reception when a new city administration came into office in New York. The speed with which he was discharged shows how little the people appreciate and support this type of police activity.

Throughout their history the police organizations of the United States have been closely allied with political parties, and in this relationship have been little more than political footballs of the bosses. Whenever there came a change in police administration it was usually for the best interests of the political party in control. Some cities even recognized this condition by requiring their police boards to be bi-partisan in its make-up.

Recent surveys show that these conditions are still with us with unfavorable effects upon the qualifications of appointees, their terms of office, their independence, and their esprit de corps. The commissioners of London's Metropolitan Police have had an average term of fifteen years in office; while in New York

the average term of the commissioner of police is one year and seven months; in Chicago, two years; and in San Francisco, one year. This condition does nothing toward improving the morale of the men in the rank who soon realize that promotion depends upon influence rather than merit. With this in mind the average patrolmen can be made to see the advantage of being in the good graces of the political favorites, and that his advancement will be proportionate to his ability to realize when to forget that he is a policeman.

The Missouri Association for Criminal Justice in its crime survey has made a detailed examination of certain police organization. In it Bruce Smith speaks of the Kansas City, Missouri, department as "riddled with politics," that of St. Joseph was not much better, while St. Louis is improving although with no assurance that the gain will continue under the next board.[76] These cities are not alone in their difficulty.

At the top of the whole system of criminal procedure is the public prosecutor, and official with more power than either judge or jury. Even though the magistrate may bind a suspect over for the grand jury after the preliminary hearing, the prosecutor need not abide by the action of the magistrate and he may refuse to present the case, in which event the whole proceeding is dropped. When the prosecutor does decide to appear

76. "Missouri Crime Survey," op. cit., pp. 40-41, and Morris, op. cit., p. 233

before the grand jury with his recommendations the jurors, lacking legal training, can do little but rubber-stamp his recommendations. The only evidence that they hear is that which the district attorney wants them to hear. In this way a prosecutor can drop a case which has had no preliminary hearing without assuming any responsibility for so doing, for all he has to do is to offer such inconclusive evidence that the grand jury will refuse to issue an indictment. In some localities, prosecutions are initiated by the use of the information the entire procedure resting with the prosecutor. He also has the power to enter a plea of "nolle prosequi," which means that the district attorney does not intend to prosecute the case, and this action on a valid indictment does away with the possibility of any further proceedings. It also lies within the province of the prosecutor to accept a plea of guilty to a lesser offense instead of trying the defendant on a more serious charge. The manner in which the trial is conducted, when the case does come to court, rests with the prosecutor to a very large degree. The larger cities find the prosecutor's office swamped with complaints from the citizenry, and the prosecutor must decide just what he will do with them - ignore them or take some form of action.

The Missouri Crime Survey made by the Missouri Association for Criminal Justice gives a striking example of the real power of the prosecutor as shown by the records of felonies in St. Louis, Jackson, and Buchanan counties, and the other county districts. From this study we see that arrests were made and war-

rants were applied for in 8637 cases. The disposition of these cases was 400 guilty after trial, 1832 pleaded guilty, and 6135 on which action was started but were not prosecuted by the state.[77] These figures show convincingly that the power of the judge and jury is slowly dwindling into insignificance, while that of the prosecutor is becoming unlimited.

The trouble with this set-up is that the responsibility of the prosecutor is not commensurate with his power. In most jurisdictions his work never comes to public attention because the public is not interested in the office work which comprises the major portion of the district attorney's work. The cases coming before the prosecutor are so numerous and the available facilities are for the most part inadequate for their investigation and preparation that the prosecutor must therefore make his choice between trying them in court or disposing of them informally. Certain cases - where the defendant has died or is in prison, where essential witnesses are missing - are best handled by nolle prossing. Still others may be best handled informally.

The nolle-prossing power has been subject to much abuse because many cases are dropped on the "say-so" of the prosecutor and his assistants without any control. In some jurisdictions, attempts have been made to remedy this condition by requiring

77. "Missouri Crime Survey," op. cit., pp. 121-122

con-currence. This ruling is not as binding as it seems for the judge has no facilities for investigating the cases that the prosecutor wishes to drop, especially when the district attorney brings in nolle-prosses by the hundred. According to the Cleveland survey in 1920 this situation confronted one judge - "nolles in 410 cases were simultaneously presented to the court and entered."[78]

Because the nolle-prosequi has been so freely used and subjected to such abuse the courts and every crime commission, without exception, have turned the spotlight of publicity on it and laws have been passed to curb it. According to Moley in 1925, in Cleveland 11% of those cases for which indictments were issued were nolle-prossed, in 1923 in Minneapolis 28% of the cases were nolle-prossed, and in Chicago 25% were nolle-prossed.[79] New York, although it has abolished the formal nolle prosequi upon motion of the district attorney, sees its courts dismissing about the same proportion of cases as are elsewhere nolle-prossed.

In some localities criticism of the use of the nolle prosequi has evoked such public indignation that the proportion of "nolled" cases has dropped - the prosecution having apparently become more discreet. The decline of nolle-prossing has given rise, however, to the equally vicious practice of accepting pleas of "guilty" to lesser offenses than those charged. This practice

78. "Survey of Criminal Justice in Cleveland," The Cleveland Foundation, Cleveland, Ohio, 1922, p. 182
79. "Politics and Criminal Prosecution," Raymond Moley, Minton Balch and Co., New York, 1929, p. 152

is being used so extensively that prosecutors still have ample liberty to use their own judgement in the disposition of cases. Again from Moley we find that in Chicago in 1926, out of 2449 convictions secured only felony charges, 594 were on the crime originally charged while the balance were for lesser crimes than those charged. In 1926 in New York State similar pleas were made in 37.5% of all of the cases arraigned, and in New York City similar pleas were accepted in 52.5% of all of the cases arraigned.[80]

This practice of accepting a plea of guilty to a lesser offense is merely a portion of the very extensive bargaining process that goes on between prosecutors and defendants. These pleas are usually the result of an understanding between the state's attorney and the defendant's attorney whereby the prosecutor intercedes with the judge for leniency for the defendant or aids the prisoner in his attempt to get an early parole. In defending this practice the prosecutors claim that this action helps to clear the crowded dockets of unimportant cases; and that this method gives a more judicious decision to cases requiring disposition on the grounds of surrounding circumstances which judges, because of their position, are not able to consider. Yet in spite of the well-meant attitude on the part of the prosecutor that the acceptance of a lesser plea is unimportant the large proportion that are settled in this manner make this contention rather questionable. There can be no doubt that the defendant's

80. Moley, op. cit., table, p. 169

background merits extra-legal consideration, but it is doubted whether the district attorney's office is the correct agency to do social case work.

Looking at this condition from another angle, there can be no doubt that the public prosecutor, when he practices this method of informal compromise, realizes that a long list of convictions looks impressive on election day, while the judge sentences an offender without possibility of having his decision reversed by a higher court and the defendant drives a good bargain in terms of money and punishment.

An office with such wide powers is obviously a boon to the politicians. Through this office, the "bosses" have it within their power to grant favors, punish political irregulars, impress influential members of the community, corporations and organizations by having the prosecutor attack their enemies and by lenency towards their own failings, and prevent interference with their programs by reform agencies. It is because of these factors that the office is more than not used in accordance with political expediency and rather than be an officer of justice the prosecutor is more likely to shine as a political strategist.

Assistant prosecutors are too often young men, usually averaging 25-29 years, who have recently been admitted to the bar. These men quite naturally look upon the office as something to carry them over the early days until they can open their own office. The office is merely a stepping-stone to more important positions. In it their hope to gain experience and prestige. They realize that with successful handling of sensational

cases comes newspaper publicity and that a conviction in such cases means votes. More often than not the state finds that it is running a training school rather than a capably staffed prosecutor's office. About 100 members of the Cleveland bar were asked to express their opinions of their municipal and county prosecutors. Ninety-two declared them to be incapable of holding and properly performing the duties of their offices.[81] In Los Angeles, a chief assistant to the prosecutor claimed less than 10% of the assistants who receive appointments to the office have more than one year's experience at the bar.[82] It was found that 40% of the prosecutors in Missouri are not law school graduates and many of them have a limited preliminary education.[83]

The lack of adequate equipment also frequently handicaps the work of the prosecutor's office. There are some offices like that of New York County which are adequately housed, have the services of medical, photographic, and engineering specialists, and the facilities of a law library of 42,000 volumes, but these are few and far between. Once we get out of the great cities the library facilities are especially inadequate. In the small cities the county prosecutor must act as a jack-of-all-trades able to do the neglected work of coroner, sheriff, and detective as well as that of his own office. The records which are kept are so poorly kept that they are almost useless. Appropiations

81. "Survey of Criminal Justice in Cleveland", op. cit., pp. 133 and 167
82. Moley, op. cit., p. 67
83. "Missouri Crime Survey," op. cit., p. 157

for expenses are skimpy, and in some states there is not even an allowance for clerical help. When we compare the salaries of the district attorney's office with the professional earnings of other lawyers, we see why the office is usually used as a stepping-stone. The salaries range from $400 a year in some Nebraska counties to a maximum for the country of $15,000 a year in Cook County, Illinois. Further examples of the variance in salaries are cited by DeLong and Baker. In Vermont the salaries vary from $450 to $1700 per year, Wyoming salaries range from $1200 to $2000, and Nebraska salaries from $400 to $4000. The actual maximum salary paid in only one or two counties in Pennsylvania and New Jersey is $12,000, in Indiana, $10,000, and in Massachusetts, $9,000.[84]

"When the tremendous power of the prosecutor's office is considered it would seem that only politicians and criminals have paid sufficient attention to it. Yet it remains the most vital part of the entire machinery of administering criminal justice; an office upon which the full glare of an intelligent public interest should be centered in order that man of the highest talent and of unimpeachable integrity may be elected to it, and thereafter safeguarded by a thorough recording of the disposition of all cases and the specific reasons therefor."[85]

Second in importance only to the prosecutor, in actual practice, is the examing magistrate of our municipal courts. To

84. "The Prosecuting Attorney," De Long and Baker, Journal of Criminal Law and Criminology, Vol. 23, p. 943.
85. Morris, op. cit., p. 273.

that vast multitude charged with petty offenses, drunks, ne'er-do-wells involved in disorderly conduct, the magistrate is the judge. Each morning finds his court, if it is located in a large city, crowded with people like those mentioned above. Being only petty offenders, they are, as a rule, not represented by counsel nor is one assigned and they are usually prosecuted by the arresting officer or a special officer detailed to handle all court cases; there is no attempt made by the defendants to cross-examine the witnesses and after a summary hearing they are either found "not guilty" and are dismissed, or "guilty" in which event they are punished.

The layman, first seeing a municipal court in action, is sadly disappointed. This disappointment is, in part, due to the conditions under which such courts are held. Crowded dockets and inaccessible records of repeaters are characteristic of the average municipal court. The cases must be disposed of with speed and some cases appear with such frequency that their dispositions become habitual, and first offenders are given the same doses as habitual criminals.

In some states the judges are selected - where this is the case, they find themselves in the same position as the district attorneys. By virtue of their position as an elected officer they are obliged to be amenable to suggestions from political workers whose constituents get into trouble. This condition takes from the court whatever feeling of dignity, firmness, and justice there is left. In face of these methods is it any wonder that the average person looks upon the entire judicial system with

a mild cynicism.

Another type appearing in this court is the habitual offender who sees in this preliminary hearing a chance to escape the law's clutches. His only interest in the proceedings is to see whether or not the magistrate will bind him over to the grand jury. He is represented by counsel - men with political influence- who intend to take advantage of the flaws in this court.

The magistrates vary greatly in ability and as a group they tend to be of inferior calibre as the Cleveland Foundation discovered; they lack experience and legal knowledge and have, as a rule, risen to their position by means of political influence. The standards of the office are too low throughout the country. In Philadelphia, magistrates need not be lawyers. In Chicago, only fourteen of the forty judges elected to the Chicago Municipal Court since 1917 have had any college training whatever. "The judges of the Cleveland Municipal Court were characterized by Smith and Ehrmann in the Cleveland Survey as 'inferior in quality and ineffectual in character.' Probably 'ineffectual character' marked by a lack of courage and resourcefulness is a greater handicap to a magistrate than a lack of legal scholarship.... The municipal court....can be managed passably well with a rough and ready knowledge of the law if it is based upon sincerity and a genuine insight into human nature."[86]

As stated before the chief reason for unsatisfactory magistrates is the unsatisfactory aims in the political factions that secure their appointment or election. Regardless of strength

86. Morris, op. cit., p. 275

of character, every magistrate finds it difficult, particularly in an elective office, to escape political influence.

"Recent exposures of corruption among the appointed magistrates in New York City indicates fairly well that the governing ideals of the party that elevates them to the bench is a better gauge of the quality of magistrates than the methods of attaining office.....

"These very conditions that preclude the possibility of justice for the unintiated furnish the means by which shrewd offenders can escape. Faulty second systems make it difficult to uncover their histories., their attorneys are political workers capable of exerting pressure where it will be useful. They are part of the inside courthouse ring able to use every device of friendship or profit to gain advantages for their clients."[87]

Contrary to popular opinion the preliminary hearing is not an inconsequential proceeding. Often it is not preliminary to indictment and trial. Instead, in a large proportion of cases it represents a complete settlement of the case through the dismissal of the charge and the release of the prisoner.

And again from Moley we find that in New York in 1926 in the preliminary hearing 58.7% of the felony cases were dismissed or discharged, in Chicago the proportion was 48.8%; in Milwaukee 17.3%; in Philadelphia 78%; in St. Louis 34.7%; and lastly in

87. Morris, op. cit., pp. 275-276

Cleveland 38.6%.[88] In view of these facts, magistrate's courts might well be afforded some of the attention hitherto given to the later but less influential points in the judicial process.

The trial courts have captured popular interest like no other part of the criminal procedure, and so we turn our attention next to the trial judge.

In spite of obvious failings, we find in the person of the trial judge one of the most hopeful figures in the entire scheme of criminal justice, and this because he has been less besmirched by the corruption about him than have other officers; although the public has lost confidence in criminal lawyers and the prosecutors, he has still retained their confidence. Because of the scorn heaped on those corrupt judges that conduct, while expected by some politicians, cannot be condoned in those who wear the judicial robes.

In view of these facts, the tendency has been to give the judge more power inasmuch as he is the most likely hope for court improvement. Signs of a change in the present powers of the trial judge are imminent, whereas heretofore the judge has been little more than an umpire in the trials without power to make comments on evidence presented - he has been, to all intents and purposes, non-committal. However, the rise of probation has given the judge the machinery for exercising discretion in sentencing

88. Moley, op. cit., table, p. 26

those offenders who have been convicted. The federal courts and those of six states give judges the power to comment on the weight and credibility of the evidence before the court. Several states go still farther and make provision for the waiving of the jury trial by the defendant and the submission of the entire case to the judge for determination. Several other states have provided for the waiver of a jury trial in certain types of criminal cases.

If these improvements are to be universally accepted, then there must be changes in the present scheme of electing judges to office. The system must be taken out of politics for it is absurd to imagine the justices of the state courts indulging in disgusting self-publicity both in court and out. Whether appointed judges will be better than elected judges depends upon the manner of their appointment. If the appointer is merely paying a political debt, the method has nothing to commend it in preference to a popular election.

The Cleveland Foundation in its survey offered suggestions for improvement which include modifications of both the elective and appointive systems. The following three methods were recommended for Cleveland in order of their preference and possibly also in the inverse order of the probability of their achievement.

"1. The appointive method for a retirement election whereby a judge runs against his own record.

"2. A modified appointive method, as, for example, an elective Chief Justice who appoints his associates.

"3. A modified elective system whereby judges are elected for a short first term, but if reelected, then for progressively longer terms. Judges standing for reelection should not run against other candidates, but only against their own records. The single question presented to the electorate should be, "Shall this judge be retained?"[89]

"A good, non-partisan civic league or an alert bar association might wield a tremendous influence in the nomination and election of suitable candidates or under an appointive scheme they might prepare a list of nominees from which the governor or mayor might make an appointment."[90]

In dealing with the attorney for the defense we are concerned, in this paper, with criminal lawyers. With few exceptions these criminal lawyers build up a regular renumerative patronage among those whose vocation is crime and their success depends upon their gaining acquittals or reduction of sentences. In view of conditions in the prosecutor's office and the magistrate's court, these men also have influential political connections. Hence good criminal lawyers will use both political and legal means to achieve their ends. Even more important than legal skill is knowledge of the underworld and political influence.

Of course, it would be unfair to say that every criminal

89. "Survey of Criminal Justice in Cleveland", op. cit., p. 276
90. Morris, op. cit., p. 279

lawyer is of this type, but inasmuch as civil law is more profitable, more impersonal, and more interesting to those who enjoy solving legal questions, it has attracted the better legal minds and has hence become more respectable than criminal law. This in turn exercises a selective effect that favors the civil branch. Out of 386 members of the Cleveland Bar who were questioned only 12 took criminal cases regularly, as a result, we classify those engaged in defending criminal cases into some such categories as these:

"1. Lawyers recently admitted to the bar who will take what work they can get for the sake of experience and a small fee.

"2. Poor incapable lawyers who frequent the courts in the hope of being appointed to defent a client who has an attorney.

"3. Good civil lawyers who occasionally handle an easy criminal case for a friend.

"4. Capable Lawyers such as an ex-prosecutor or a law-school professor engaged or appointed by a judge to defend the accidental or single-offender type of criminal charged with a serious crime.

"5. Successful attorneys whose business is largely the defense of clients in criminal cases."[91]

If we are to judge by the number disposed out of court or by pleas of guilty in court we would come to the conclusion that

91. Morris, op. cit., p. 280

the successful criminal lawyer is seldom found in action at a trial. His work involves only a little law, rather it consists chiefly of keeping on good terms with the "boys" around the courthouse, of "seeing" the right people, of bargaining with the prosecutor for the best possible terms, and getting the case tried before the right judge. The criminal lawyer must be and is a past master at all forms of political and legal chicanery.

The lawyer usually assigned as counsel to a defendant without money by the court is frequently inexperienced, unsuccessful or unscrupulous attorneys brought into the case too late to take any part in any of the vital preliminaries to the trial. The best these lawyers can do is to steer their client through the technicalities of the trial and go through the motions of conducting his defense. Because of these conditions there has risen in some jurisdictions the office of public defender. Although the forms of the office may differ in the various jurisdictions, the aim is universally the same: to provide an adequate legal defense for impecunious clients.

Under this system the public defender is appointed by the county authorities at a fixed salary, for which he defends all persons charged with offenses without cost. Contrary to popular opinion this additional office is not over-expensive for it can utilize the same facilities as the prosecutor's office does; and the entire cost is less than that paid to assigned counsel. In Cleveland in 1920 assigned counsel handled 528 cases at a cost of $32,500, while in Los Angeles in 1917 the office of the public

defender handled 522 criminal as well as 8000 civil cases for less than $25,000. In other jurisdictions the public defender's work is proving equally efficient and in every case far superior to the unfortunate system of assignment of counsel.

Jury trial has often been the subject of extensive and foten vitriolic criticism, and there has recently been a movement to do away with the trial by jury entirely. The feature of the jury method that critics criticize most are:

1. The method of impanelling a jury excessively delays and harms the administration of justice. In the Calhoun case in San Francisco ninety-one days were spent in selecting a jury. When Shea was tried in Chicago 4821 jurors were examined in order to impanel twelve men, whereas in Canada, according to Justice Ridell of the Ontario Supreme Court, only once in his thiry years on the bench has he seen it take more than half an hour to select a jury; and in that one exceptional case the process took forty-eight minutes.[92]

Reasons for this greater efficiency of the English in securing juries seem to be:

(a) The spirit of the court proceedings is business-like. Facts are reported openly and without quibbling, whereas in America the trial is a battle of wit.

(b) English jurors are selected because of their character

92. Moley, op. cit., p. 117

and intelligence and are freed from the sharp, sometimes insulting, quizzing of contending attorneys. In America, the jurors are likely to be the least promising of citizens.

2. The jurymen all usually incapable, unintelligent, and unqualified to the work required of them. The law weeds out those persons who by training and intelligence would make good jurors - clergymen, physicians, lawyers, teachers, firemen, policeman, and members of the National Guard. Business men also can get out of service on juries by claiming that their interests would be injured by such service. New York exempts an even larger group which includes undertakers and embalmers. George Alger in his "Moral Overstrain," has included a chapter on juries which is enlightening besides being humorous.

The result of this selective process is to leave available for jury service the less fortunate members of the community who are usually also among the least competent.

3. A third criticism of the jury system is that too many extraneous factors influence jury decisions. Jurors are often not used to discussing any one subject for hours at a stretch and this fatigue leads to haggling and disinterestedness. The Boston Herald of February 5, 1931 carried an interesting report of the jury proceedings that led to a disagreement in the Garret trial, which illustrates this contention most satisfactorily.[93]

93. Morris, op. cit., pp. 283-285

No one doubts the charge that improvements could be made in the rules of procedure that affect the jury trial but the weaknesses of human nature loom so large in its failings that one doubts whether the reforms are so important as they are thought to be. We must fact the fact that the jury is but a minor factor in the administration of criminal justice completely overshadowed by the power of the prosecutor and the examining magistrate. And as such receives a sentimental interest which its extremely limited influence does not warrant.

The opportunity of allowing defendant to waive jury trial is rapidly becoming popular, although public sentiment still favors the jury in that it gives average man a chance to assert himself in government. In most states where optional waiver is the rule it has met with a large measure of success.

One regular but unofficial attendant of the court is the professional bondsman. He is characterized by Dr. Raymond Moley as a man of poor character, with close relations with the underworld, who makes excessive charges for his services, who evades responsibility, who pledges property in excess of its value, and who maintains improper relations with public officials.[94]

Dr. Glueck speaking of bail bondsmen, says that he is most unscrupulous with many contacts which he uses to forestall criminal justice for his own end for he benefits from many or long

94. "Missouri Crime Survey," op. cit., p. 207

postponements. He charges a high rate for his services, and frequently puts up inadequate security for his bonds; and though the bonds are forfeited the state rarely profits from forfeiture, because of the poor value of the bonds and the carelessness in granting bail by the authorities.[95]

95. Glueck, op. cit.

Proposed Recommendations with Reference to Unpunished Crimes

Having shown what was wrong with the agencies administering criminal justice, I propose to offer some remedies for the existing evils. Naturally, where the evil exists there should be a remedy. In my discussion of the evils I have suggested some remedies. Some of them will be repeated here, others will be new.

We shall start with the police system. I stated that there was a need for a better calibre of policemen. How are we to get this better calibre of policemen? This same problem confronted August Vollmer when he took over the commissioner's post in Berkeley, California. What Vollmer did is history. Instead of letting things slide, he set out to improve police conditions, went after the college students for members of his police force. By making the idea of being policemen attractive he gathered around him young college graduates and trained them along modern methods of criminology. His force responded to his ideals and today they form one of the finest forces in the country. The answer to the question at the beginning of the paragraph is to offer better salaries, make the position something to work for, and make a higher education one of the requirements for a position on the force. When those who would be assets to a police see that there is something to be gained by joining the force they will join.

The police lack proper training - that is certain, but what are they doing to remedy it? Boston's commissioner felt that inasmuch as no new men were appointed to the force last year, he

could do away with the training school, such as it was. Evidently, those serving on the force did not need any training. A bill to establish a training school for policemen in Massachusetts was killed by members of the policemen's association themselves. Without proper training along crime detection lines, our police will slowly fall into a rut and then they will be so far behind times thay they will never catch up to the criminals. We must install, in every major police department, a training that will give the men on the force, a sound basic knowledge of the fundamentals of criminology and crime detection.

Gradually the major police forces are adopting uniform crime detection but there are still improvements to be made all along the line. To begin with there usually is no means of effective communication other than by patrol boxes in the city, and interstate communication by means of the teletypewriter, while it is being extended, has not yet reached its maximum point of development.

Neither is there one uniform system of crime detection itself. Only twenty-four states in 1934 had fingerprint bureaus. Since 1924 there has been established a National Division of Identification and Information within the Department of Justice at Washington which exchange and furnishes identification for all law enforcement agencies. Some states require cooperation with the division, but it is still voluntary for the most part.

Fostered by the Federal Bureau of Investigation are the following much-needed improvements: Schemes for classifying

handwriting, the use of the Davey decimal system for recording stolen and recovered property, the development of effective laundry mark files, better laboratory equipment including microscopes, the use of the so-called "lie detector," better record keeping, including the use of a uniform crime report schedule, a uniform police chiefs' annual report, and a system for following through and recording the disposition of all complaints.

To increase the police power is something to conjecture about for it is not easy to get the people to give up some of their liberties which, incidentally, they no longer have in a strict interpretation of the term. To remedy this condition we must give to the police the following powers: they should be made national; they should be allowed to detain persons even though they are not suspected criminals, they should be given power to legally subject accused persons to extensive questioning; they should have discretionary powers of seizure and search; they should be protected against prosecution by the lay citizens. While these points are debatable, and the old cries of "preservation of human rights" and "due process of law" would be raised against them, the beginning must be made at sometime and I feel that the time is now propitious for such action.

The next evil is lack of a high morale among the policeman. With the remedying of the other evils, I feel that this evil will work itself out, but not until the others are taken care of can this one be remedied.

Political interference in police work has long been a com-

plaint of every police commissioner. Police today are handcuffed by politics. In almost every city the policemen can get on the force by having the necessary political influence. This being done, the policemen spends the rest of his time on the force trying to repay the debt. We must take politics out of the force. The only way to do this is to have a board of criminological experts devise an examination covering all phases of police work, then score each paper, and make up a list from which to select the police force. This selection would not be undertaken until the applicant has had a personal interview with this board,, at which time he would be given a short oral examination. This board would be composed of trained men who would act in the capacity of an advisory board to aid the commissioner in making his decisions much as the cabinet helps the President reach his decisions. This board, non-partisan in composition paid a salary equivalent to that which they would receive in following their regular occupation, all experts in their fields, would be appointed by the executive officer of the state. This board would appoint the commissioner and his successors and would advise him in the problems of administration and organization.

Moving over to the district attorney's office we are confronted with three evils - the nolle prosequi, the acceptance of a plea of guilty to a lesser offense, and the lack of adequate personnel and equipment.

Many suggestions have been offered as to how to curb the nolle prosequi practice. The best which has come to my attention

is the one which would require the district attorney to file in writing the reasons for his entering the nolle prosequi plea, and this bill would be available to all who wished to see it. This is the simplest and easiest solution to the problem, for the prosecutor being an elected official would be required to defend his actions at the coming election and then take his chances on being elected on his record. Such a method would curb this practice.

The practice of accepting a lesser plea is a new evil. It could be remedied in the same way - require the prosecutor to file in writing the reasons for his acceptance of a lesser plea, and this notice or bill would be available for all those who wished to see it.

District Attorney Foley of Suffolk County, Massachusetts was asked about the matter of personnel and equipment. To the lack of an adequate personnel he laid much of the blame for crimes going unpunished. If we were to give the prosecutor the necessary personnel and equipment he could prosecute more criminals and more successfully. The average district attorney is forced to take as assistants, lawyers fresh out of law school, men with no practical experience. The good lawyers will not take an assistant's or even a district attorneyship - he can make more in his regular practice. We must give the district attorney more money for better assistants and for better equipment. With these the district attorney will be in a better position to prosecute and prosecute successfully.

Improvements in the court system can and should be made

along several lines. "The present requirements, both of training and character, for admission to the bar could be lifted several notches without making the legal profession too exclusive. Both the law schools and the bar associations face a responsibility here. Any progress towards the training of honest and socially responsible lawyers acknowledging their primary duty to the public at large would remarkably raise the level of procedure by changing the legal process from an ordeal by battle of wits to a straightforward effort to establish the truth. Pre-law school requirements of study in sociology and psychology are needed to develop within the profession the viewpoint that is essential to a socially progressive legal group from which much of the impetus and direction for the necessary but difficult legal reforms must come."[96]

At present, the courts are not well-enough organized for the work they are trying to do. As the Cleveland Survey points out, the fundamental trouble is the persistence of rural methods in an urban environment. Absence of system interferes little with the attainment of justice in a village court where everyone's actions are public, but it makes municipal courts impotent to perform their duties. Still our courts try to work independently of each other and in the dark. No improvement is more needed than carefully planned organization of our state courts, prosecuting,

96. Morris, op. cit., p. 293

and administrative under a responsible head. A program such as this involves adequate cross record and audit systems, efficient assignment of work, and proper facilities for handling quasi - criminal traffic offenses and petty crimes. It implies a utilization by the courts of the reasonable tested knowledge of the social sciences, particularly psychiatry.

Steps toward unification have already been taken in a few courts, notably in Detroit in 1920 and in the federal courts in 1922. Massachusetts has taken the lead in the use of psychiatrists as a routine procedure. The American Judicature Society is advocating a conservative plan for merging our state courts into a unit with a judicial council in control. Although the first steps of this plan are timid and halting, the ultimate success of the movement seems inevitable.

Other students of this phase of the subject suggest an idea which would limit, as Mexico has already done, the function of the courts to the mere determination. With this accomplished, the offender would undergo a clinical study in a diagnostic prison by a staff of trained psychologists, psychiatrists, and sociologists, with ample opportunity for studying the offender rather than by a judge who has neither the facilities nor the training for determining the best program for rehabilitating the criminal and protecting society. The program, administered by trained penal workers, would be subject to a change in the treatment of each case as circumstances might warrant. The length of the individual sentence would depend upon his needs and his progress in fitting

himself to live in freedom among his fellow-men.

Such a scheme is, of course, opposed by all those "old guard" individuals who see in it as does the judge - a breakdown of necessary legal principles and the destruction of individual safeguards, or as does the lawyer - a mere escape from a just punishment. The professional criminal opposes such a method because he cannot be sure just when he will be released. However, the idea has caught hold, and it is gradually spreading. This is seen in the newer methods of penology.

Still another, yet more radical idea is to eliminate the entire contentious system and the trial would then become a scientific investigation along legal and social lines rather than a contest. The court would be limited to a determination of whether a crime had been committed; if so, by whom, and what primitive measures should be taken. The procedure would be in the nature of a scientific investigation within legal limits. A judge, under this scheme, is the only court officer required - the jury and the antiquated procedure will have been done away with, and he shall act as a chairman to safeguard rights and to accept the responsibility for the conduct of the inquiry. The basic idea behind this scheme is to uncover the truth and meet it squarely. The entering wedge has been driven by the juvenile and domestic relations courts which follow this scheme.

To combat the bail evil, three suggestions are offered:

"1. The more extensive use of the summons.

"2. Extension of the practice of releasing prisoners

on their own recognizance without sureties.

"3. A more careful determination of the amount and nature of the surety required with, a possible increase in the use of case deposits for petty crimes."[97]

97. Morris, op. cit., pp. 290-291

Summary

Like most other problems that pertain to crime, that dealing with unpunished crimes has been left to more or less seek its own solution. The author realizes that he can do little more than scratch the surface, but he does hope that this scratch will set people to thinking.

The first problem confronting any student of the subject is the matter of defining crime. Such a matter is most difficult, however, for the most states have different definitions of what constitutes a crime.

We, therefore, see the difficulty in giving an adequate definition of crime because of the many varied interpretations of this term. A crime is only what the law says is a crime - nothing more.

Crime is today one of the nation's biggest businesses, but any study of the cost of crime faces a great many difficulties. Most of the problems arise out of a consideration when we try to figure out the crime bill of the nation, how much shall we charge to the cost of crime and what part to civil business especially as regards salaries of judges, attorneys, other court officers, clerks and janitorial staff. What part of the investment in court buildings, equipment and running expenses should be allowed as a cost of crime? These same problems confront us in analyzing the cost of police protecti n, probation, parole, and the city, country and state institutions which sometimes non-criminal dependents as well as criminals.

Dorr and Simpson, in their survey, agree that it is impossible to state a single lump-sum figure that will even approach the aggregate annual economic cost of crime to the United States. Their estimate is $889,766,000 annually but estimates go as high as $18,000,000,000, made by Reeve in 1931.

There is a definite lack of statistics by which we can correlate the cost of crime with the number of prison committments because of the absence of proper police records. However, many crime surveys have been made which have made many notable contributions to this subject of unpunished crimes by showing wherein lay the cause for crimes going unpunished. From these surveys which cover a large number of felony cases which have been followed through from arrest to ultimate sentencing.

There are three agencies for the administration of criminal justice with which we are concerned in that they, for the most part, cause crime to go unpunished. They are: the police force, the prosecuting attorney's office, and the court system.

The police force is characterized by six things:

1. The need for a better calibre of policemen. An attempt must be made to induce the better type college man to join the force rather than recruiting the force from those whose intellectual level is, on the average, below that of a high school graduate.

2. The lack of proper training. Very few if any police forces now offer any sort of training for their "rookie"policemen with the result that the vast majority of new policemen are properly trained and well-enough equipped by their training to com-

bat the criminal element in their first contact with them.

3. The lack of a uniform crime detective system. Although most large cities have adopted the uniform crime detection system there are still cities that do not have a crime detection system.

4. The lack of police power. Our police are sadly lacking in police power when their status is compared with that of their continental European brethren with the result that they are severely hampered in their work.

5. The lack of high esprit de corps. Because of the poor calibre of men, no training, poor equipment, political interference and other factors, the men on the force lack a morale and a pride in their work.

6. Political interference. The police force has become, in many jurisdictions, a political football, with appointments being made to pay political debts.

In the prosecuting attorney's office there are three evils:

1. The prosecutor has too broad a power of nolle prosequi which makes him too great a power with no checks.

2. He also has the opportunity to accept a plea of guilty to a lesser offense to obtain a conviction.

3. As a rule, his office is undermanned and his equipment is far below that which a good attorney of his position needs. His office is too often looked upon as a stepping-stone to higher political offices.

The present court system has been found to be at fault in that:

1. The magistrate and magistrate's court do not have the responsibility commensurate with their power.

2. The trial judge, in many places an elected official, is, by virtue of this fact, forced to play politics.

3. The attorney for the defense is, in more cases then not, a shrewd, conniving lawyer who uses all the political power at his disposal to gain the best possible terms for his client.

4. The assigned counsel is more often than not a mere beginner appointed by the court because he is the only lawyer available.

5. The trial jury is a group easily swayed and not intellectually equipped to follow the evidence and pleas of the lawyers.

6. The bail system is in some instances run by men who are so unscrupulous that they will try to postpone the cases in which they are interested so that they can charge the person extra for the extra time involved.

Among the recommendations for improving these conditions would be:

1. Raise the requirements for entrance to the police force, offering better pay, a better system of training, the adoption of a uniform system of crime detection with the corresponding granting of more power to the police, the removal of the police system from political hands. All these when combined will give a high esprit de corps.

2. In the prosecutor's office recommendations would be to limit the powers of the "D. A." to nolle prosequi any case and to accept a plea of guilty to a lesser offense. He also should be given a larger budget for his personnel and equipment.

In the court many recommendations may be suggested among which is a unification of the courts, limitation of the courts to a mere determination of guilt, and a resolving of the court trial into an investigation of the crime along legal and social lines. The judge would first be appointed and then required to run against his own record.

To combat the bail evil we suggest extending the use of the summons, extending the practice of releasing prisoners on their own recognizance, and a more careful determination of the amount and nature of the surety required.

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